FEDERAL REGISTER

Vol. 77 Wednesday,
No. 70 April 11, 2012

Pages 21623–21840

OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, May 15, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–11–0060; FV11–927–2 FIR]

Pears Grown in Oregon and Washington; Assessment Rate Decrease for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Fresh Pear Committee (Committee) for the 2011–2012 and subsequent fiscal periods from $0.501 to $0.471 per standard box or equivalent of fresh winter pears handled. The Committee locally administers the marketing order which regulates the handling of fresh pears grown in Oregon and Washington. The Committee recommended the assessment rate decrease because the fresh winter pear promotion budget for the 2011–2012 fiscal period was reduced.

DATES: Effective April 12, 2012.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Oregon-Washington fresh pear handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable fresh pears for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on August 31, 2011, and effective on September 1, 2011, (76 FR 54075, Doc. No. AMS–FV–2011–0060, FV11–927–2 IR), § 927.236 was amended by decreasing the assessment rate established for the Committee for the 2011–2012 and subsequent fiscal periods from $0.501 to $0.471 per standard box or equivalent of fresh winter pears handled. The Committee recommended the assessment rate decrease because the fresh winter pear promotion budget for the 2011–2012 fiscal period was reduced. The assessment rates for summer/fall and ''other'' fresh pears remain unchanged at $0.366 and $0.00, respectively.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,581 producers of fresh pears in the regulated production area and approximately 38 handlers of fresh pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the Noncitrus Fruits and Nuts 2010 Summary issued in July 2011 by the National Agricultural Statistics Service, the average price for fresh pears in 2010 was $591 per ton. The 2010 farm-gate value of fresh pears grown in Oregon and Washington is estimated at approximately $249,500,579, based on shipments of 19,189,400 44-pound standard boxes. Based on the number of fresh pear producers in the Oregon and Washington, the average gross revenue for each producer can be estimated at approximately $157,812. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Northwest pear handlers currently ship less than $7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington fresh pears may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011–2012 and subsequent fiscal periods from $0.501 to $0.471 per standard box or equivalent of fresh winter pears handled. The Committee unanimously recommended 2011–2012 expenditures of $8,827,860 and an assessment rate of $0.471 per standard box or equivalent of fresh winter pears. The assessment rate of $0.471 is $0.03 lower than the previous rate. The assessment rates for summer/fall and ''other'' fresh pears

remain unchanged at $0.366 and $0.00, respectively. The Committee recommended the assessment rate decrease because the fresh winter pear promotion budget for the 2011–2012 fiscal period was reduced.

The quantity of assessable fresh winter pears for the 2011–2012 fiscal period is estimated at 15,500,000 standard boxes or equivalent. Thus, the $0.471 rate should provide $7,300,500 in assessment income. In addition, income derived from summer/fall fresh pear handler assessments, interest, and miscellaneous income will be adequate to cover the budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington fresh pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before October 31, 2011. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0060-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 54075, August 31, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim rule amending 7 CFR part 927, which was published at 76 FR 54075 on August 31, 2011, is adopted as a final rule, without change.

Dated: April 5, 2012.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8676 Filed 4–10–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–11–0070 FV11–927–3 FIR]

Pears Grown in Oregon and Washington; Assessment Rate Decrease for Processed Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Processed Pear Committee (Committee) for the 2011–2012 and subsequent fiscal periods from $8.41 to $7.73 per ton of summer/fall processed pears handled. The Committee locally administers the marketing order which regulates the handling of processed pears grown in Oregon and Washington. The Committee recommended the assessment rate decrease because the summer/fall processed pear promotion budget for the 2011–2012 fiscal period was reduced.

DATES: Effective April 12, 2012.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Oregon-Washington processed pear handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable processed pears for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on August 30, 2011, and effective on August 31, 2011, (76 FR 53811, Doc. No. AMS–FV–11–0070, FV11–927–3 IR), § 927.237 was amended by decreasing the assessment rate established for the Committee for the 2011–2012 and subsequent fiscal periods from $8.41 to $7.73 per ton for summer/fall processed pears handled. The Committee recommended the assessment rate decrease because the summer/fall processed pear promotion budget for the 2011–2012 fiscal period was reduced.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 producers of processed pears in the regulated production area and approximately 51 handlers of processed pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the Noncitrus Fruits and Nuts 2010 Preliminary Summary issued in January 2011 by the National Agricultural Statistics Service, the total farm-gate value of summer/fall processed pears grown in Oregon and Washington for 2010 was $76,427,000. Based on the number of processed pear producers in the Oregon and Washington, the average gross revenue for each producer can be estimated at approximately $50,951. Furthermore, based on Committee records, the Committee has estimated that each of the Northwest pear handlers currently ship less than $7,000,000 worth of processed pears on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington processed pears may be classified as small entities.

In addition, there are five processing plants in the production area, with one in Oregon and four in Washington. All five processors would be considered large entities under the SBA's definition of small businesses.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011–2012 and subsequent fiscal periods from $8.41 to $7.73 per ton for summer/fall processed pears handled. The Committee unanimously recommended 2011–2012 expenditures of $926,933 and an assessment rate of $7.73 per ton for summer/fall processed pears. The assessment rate of $7.73 is $0.78 lower than the previous rate. The Committee recommended the assessment rate decrease because the summer/fall processed pear promotion budget was reduced.

The quantity of assessable processed pears for the 2011–2012 fiscal period is estimated at 120,000 tons. Thus, the $7.73 rate should provide $927,600 in assessment income. Income derived from summer/fall processed pear handler assessments, interest and other income will be adequate to cover the budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1991 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington processed pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 2, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before October 31, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0070-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 53811, August 30, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim rule amending 7 CFR part 927 which was published at 76 FR 53811 on August 30, 2011, is adopted as a final rule, without change.

Dated: April 5, 2012.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8638 Filed 4–10–12; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 8

RIN 3150–AJ02

[NRC–2011–0180]

Interpretations; Removal of Part 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to remove its published General Counsel interpretations of various regulatory provisions. These interpretations are largely obsolete, having been superseded by subsequent statutory and regulatory changes, and this part of the Commission's regulations is no longer necessary.

DATES: Effective April 11, 2012.

ADDRESSES: Please refer to Docket ID NRC–2011–0180 when contacting the NRC about the availability of information for this final rule. You may

access information related to this final rulemaking, which the NRC possesses and is publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0180.

• *NRC's Public Document Room (PDR):* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Sean Croston, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Mail Stop O15–D21, Washington, DC 20555–0001, telephone: 301–415–2585, email: *Sean.Croston@nrc.gov.*

SUPPLEMENTARY INFORMATION: Various NRC regulations provide the NRC General Counsel with authority to issue binding written interpretations of the NRC's regulations. Between 1956 and 1977, the General Counsel of the NRC and its precursor, the Atomic Energy Commission (AEC), occasionally published such interpretations in Title 10 of the Code of Federal Regulations (10 CFR) part 8. These interpretations have not been updated, and contained various provisions that have since been superseded by statutory and regulatory changes.

To resolve these problems and prevent any confusion resulting from mistaken reliance upon outdated interpretations, the NRC is now removing and reserving 10 CFR part 8. This action is consistent with Section 2 of Executive Order 13579 (76 FR 41587; July 14, 2011), which calls upon independent regulatory agencies to repeal outmoded and unnecessary rules.

I. Background

Less than one year after the Atomic Energy Act of 1946 authorized the creation of the NRC's predecessor, the AEC issued 10 CFR 40.50, ''Valid Interpretations'' (12 FR 1855; March 20, 1947). Section 40.50 was the first AEC regulation authorizing the agency's General Counsel to issue written ''interpretations'' of other AEC regulations, which would be valid and binding upon the Commission. The current 10 CFR 40.6 is almost identical to the original 10 CFR 40.50.

Following the enactment of 10 CFR 40.50, the AEC and then the NRC added very similar regulations to most of its parts in Title 10 of the CFR. Like the current rules authorizing General Counsel interpretations, these rules did not specify where the General Counsel would publish written interpretations.

In 1956, AEC General Counsel William Mitchell issued the first formal General Counsel interpretation, 10 CFR 8.1, regarding inventions under Section 152 of the Atomic Energy Act (21 FR 1414; March 3, 1956).

Four years later, General Counsel L.K. Olson issued the next formal interpretation, published at 10 CFR 8.2, which construed the Price-Anderson Act, a provision that had been recently added to the Atomic Energy Act in 1957 (25 FR 4075; May 7, 1960).

The AEC General Counsel Joseph Hennessey then issued 10 CFR 8.3, which related to the computation of time when regulatory deadlines fell on Saturdays, Sundays, or holidays (32 FR 11379; August 5, 1967). ''Based upon comments and further consideration,'' the Commission revoked that interpretation in 1978 (43 FR 17999; April 26, 1978).

General Counsel Hennessey also published 10 CFR 8.4, which addressed whether states could regulate materials covered under the Atomic Energy Act on the basis of radiological health and safety (34 FR 7273; May 3, 1969). When faced with a later industry petition for rulemaking, the Commission defended this rule, asserting that the interpretation remained ''correct as it stands'' (67 FR 66075; October 30, 2002).

Lastly, the NRC General Counsel Peter Strauss issued 10 CFR 8.5, which interpreted contemporary illumination and physical search requirements under 10 CFR 73.55 (42 FR 33265; June 30, 1977). Since the publication of 10 CFR 8.5 and revocation of 10 CFR 8.3 one year later, the interpretations in 10 CFR Part 8 have remained unchanged for approximately thirty-three years.

II. Status of 10 CFR Part 8 Interpretations

The Administrator of the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs, recently issued a Memorandum to the Independent Regulatory Agencies regarding ''Executive Order 13579, 'Regulation and Independent Regulatory Agencies' '' (July 22, 2011). This Memorandum encouraged independent agencies to identify ''rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counter-productive,'' and to modify or repeal them. Moreover, the Memorandum advised that agencies ''should focus on the elimination of rules that are no longer justified or necessary.'' This is consistent with the longstanding policy of the Administrative Committee of the Federal Register, which maintains that each agency should ''amend its regulations whenever the regulations are rendered ineffective in whole or in part'' (54 FR 9670; March 7, 1989).

i. 10 CFR 8.1

When the AEC issued its first General Counsel interpretation, regarding the status of licensee inventions with respect to Section 152 of the Atomic Energy Act, that statute was unclear. It referred to inventions ''made or conceived under any contract, subcontract, arrangement, or other relationship with the Commission.'' Thus, General Counsel Mitchell felt it necessary to announce whether agency licensees had a ''relationship with the Commission'' under that section.

But five years later, Congress amended Section 152 to its current form, eliminating the ''other relationship'' language. The legislative history makes it clear that the purpose of this amendment was to ''more clearly define the applicability of Section 152'' by eliminating its former ''unclear'' language. See 107 Cong. Rec. 15514 (Aug. 22, 1961) (statement of Rep. Aspinall); S. Rep. No. 87–746 at 8 (Aug. 16, 1961). Therefore, § 8.1 is ''no longer justified or necessary,'' as it interprets a statutory provision that no longer exists.

ii. 10 CFR 8.2

The next General Counsel interpretation, 10 CFR 8.2, has remained unchanged since 1960. It comments on the international application of the Price-Anderson Act. The interpretation relied on ''Section 11o.'' of the Atomic Energy Act, which was the original definition of ''nuclear incident.'' That definition included occurrences causing ''damage'' without specifying the location of that damage. But since the issuance of § 8.2, that definition, subsequently retitled as Section 11q., has been significantly amended to explicitly cover damages ''within or outside the United States.'' The interpretation also relied on ''Section 11u.'' of the Atomic Energy Act, the original definition of ''public liability,'' which has since been amended and retitled as Section 11w.

Moreover, §§ 8.2(h)–(i) pointed to a ''confusing'' and ''ambiguous'' legislative history, ''since the language of the Act [at that time] draws no distinction between damage received in the United States and that received abroad.'' The interpretation concluded that Price-Anderson insurance should cover damage to Canada or Mexico caused by a nuclear incident in the United States.

However, as noted above, the crucial definition of ''nuclear incident'' has been updated since 1960. In its

amendments, Congress made it absolutely clear that ''nuclear incidents'' under Price-Anderson would include incidents in America causing damage ''outside the United States.'' There is no longer any ambiguity, and thus no need for the interpretation.

Section 8.2 is also confusing, because it hinted at a potential controversy involving ''ambiguous'' legislation where there is none. The NRC understands that some stakeholders still rely on § 8.2 as valid guidance on the scope of the Price-Anderson Act. The NRC is attempting to end any such confusion by removing this rule, which has been rendered obsolete and is thus ''no longer justified or necessary.''

iii. 10 CFR 8.3

As indicated previously, the Commission revoked the former General Counsel interpretation at 10 CFR 8.3 in 1978.

iv. 10 CFR 8.4

Nine years ago, in response to a petition for rulemaking, the Commission reaffirmed the position set forth in 10 CFR 8.4, which discussed state regulation of materials covered under the Atomic Energy Act on the basis of radiological health and safety (67 FR 66075; October 30, 2002). Although this interpretation was never updated to incorporate subsequent court decisions and other events, the NRC continues to adhere to the substance of the interpretation in § 8.4. The removal of 10 CFR part 8 should not be read to imply a change in the NRC's substantive position on this or any other issue.

v. 10 CFR 8.5

The last General Counsel interpretation, 10 CFR 8.5, referred to the illumination and physical search requirements contained in a previous version of 10 CFR 73.55. However, § 73.55 has been amended at least 18 times since this interpretation was issued in June 1977. The latest version of § 73.55 bears little resemblance to the version interpreted in § 8.5.

For example, the interpretation relied on provisions in §§ 73.55(c)(4), (c)(5), and (d)(1) that no longer exist. Moreover, it cited forthcoming revisions to a guidance document that was itself superseded thirty years ago. Unsurprisingly, the NRC staff recently concluded that § 8.5 is no longer needed from a technical perspective, and recommended removing that provision. Thus, it is clear that the interpretation at § 8.5 has also been ''rendered ineffective'' and should be removed.

III. Publication of Part 8 Interpretations

Under the Administrative Procedure Act, 5 U.S.C. 552(a)(1)(D), all ''interpretations of general applicability formulated and adopted by the agency'' must be ''state[d] and currently publish[ed] in the **Federal Register** for the guidance of the public.'' [1] All of the General Counsel's formal interpretations in 10 CFR Part 8 were properly published in the **Federal Register**. Other agencies also continue to publish their legal interpretations in the **Federal Register**. See, e.g., Department of Veterans Affairs, ''Summary of Precedent Opinions of the General Counsel'' (76 FR 4430; January 25, 2011); Department of Energy, ''Office of the General Counsel Ruling 1995–1 Concerning 10 CFR Parts 830 and 835'' (61 FR 4209; February 5, 1996).

However, publication in the CFR is another matter. Beginning with an opinion by then-Judge Scalia, the Court of Appeals for the D.C. Circuit has repeatedly held that under a provision of the Federal Register Act, 44 U.S.C. 1510, ''the Code of Federal Regulations [may] contain only documents having general applicability and legal effect.'' *Wilderness Society* v. *Norton,* 434 F.3d 584, 596 (D.C. Cir. 2006), quoting *Brock* v. *Cathedral Bluffs Shale Oil Co.,* 796 F.2d 533, 539 (D.C. Cir. 1986). See also *American Mining Congress* v. *Mine Safety & Health Admin.,* 995 F.2d 1106, 1109 (D.C. Cir. 1993) (''44 U.S.C. 1510 limits publication in [the] [C]ode to rules 'having general applicability and legal effect.' '').

Moreover, the administrative regulations implementing 44 U.S.C. 1510 confirm that the CFR should ''contain * * * Federal regulation[s] of general applicability and legal effect.'' 1 CFR 8.1. The key to this limitation on publication in the CFR is ''legal effect.''

The D.C. Circuit long-ago established that documents with ''legal effect'' are those that ''ha[ve] the force and effect of statute.'' *Sheridan-Wyoming Coal Co.* v. *Krug,* 172 F.2d 282, 287 (D.C. Cir. 1949). The interpretations in 10 CFR Part 8 do not have the binding force and effect of statute (67 FR 66076; October 30, 2002) (agreeing that the NRC's 10 CFR part 8 interpretations ''presumably would not be binding on a court''). Likewise, regulations define the term ''Document having general applicability and legal effect'' to mean ''any document issued under proper authority prescribing a penalty or course of conduct, conferring a right, privilege, authority, or immunity, or imposing an obligation.'' 1 CFR 1.1. Interpretive rules like those in 10 CFR part 8 do not meet this definition, as the General Counsel's interpretations do not have ''legal effect'' like the substantive regulations published elsewhere in 10 CFR chapter I.

Therefore, the NRC has concluded that it would be more prudent to remove the obsolete interpretations in 10 CFR Part 8 than to attempt to update these provisions. Any future formal General Counsel interpretations will be published only in the **Federal Register**.

[1] On the other hand, everyday interpretations of particular applicability regarding specific factual circumstances are not and need not be published in the **Federal Register**. See U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 22–23 (1947) (''An advisory interpretation relating to a specific set of facts is not subject to [the publication requirement]. For example, a reply from the agency's general counsel to an inquiry from a member of the public as to the applicability of a statute to a specific set of facts need not be published.'').

IV. Rulemaking Procedure

Because this rulemaking concerns interpretive rules, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A), and this rule is immediately effective under 5 U.S.C. 553(d)(2). Additionally, the NRC has determined that a post-promulgation comment period would serve no public interest under 10 CFR 2.804(e)(2) because the interpretations have been superseded by subsequent statutory and regulatory changes.

V. Environmental Impact: Categorical Exclusion

This final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, the NRC has not prepared an environmental impact statement or an environmental assessment for this rule.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the NRC is eliminating regulations that have been superseded by subsequent statutory and regulatory actions, and

this rule has no impact on health, safety, or the environment. There is no cost to licensees, the NRC, or other Federal agencies.

VIII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule because removal of these interpretations does not involve any backfits as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

IX. Congressional Review Act (CRA)

In accordance with the CRA, the NRC has determined that this action is not a major rule and has verified this determination with OMB's Office of Information and Regulatory Affairs.

List of Subjects in 10 CFR Part 8

Intergovernmental relations, Inventions and patents, Nuclear power plants and reactors.

PART 8—INTERPRETATIONS [REMOVED AND RESERVED]

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is removing and reserving 10 CFR part 8.

■ 1. 10 CFR part 8 is hereby removed and reserved.

Dated at Rockville, Maryland, this 3rd day of April 2012.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Acting Executive Director for Operations.

[FR Doc. 2012–8673 Filed 4–10–12; 8:45 am]

BILLING CODE 7590–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1301

RIN 4030–AA02

Implementation of the Freedom of Information Act

AGENCY: Financial Stability Oversight Council.

ACTION: Final rule.

SUMMARY: The Financial Stability Oversight Council (the ''Council'' or ''FSOC'') issues this rule to implement provisions of the Freedom of Information Act (the ''FOIA''). This final rule implements the requirements of the FOIA by setting forth procedures for requesting access to, and making disclosures of, information contained in Council records.

DATES: *Effective date:* May 11, 2012.

FOR FURTHER INFORMATION CONTACT: Amias Gerety, Deputy Assistant Secretary, Financial Stability Oversight Council, at (202) 622–0502.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (the ''Act'') establishes the Council, which, among other functions, is responsible for identifying and responding to threats to the financial stability of the United States. Section 112(d)(5)(C) of the Act provides that the FOIA, ''including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.''

On March 28, 2011 (76 FR 17038), the Council published a proposed rule that would implement the requirements of the FOIA as they apply to the Council. The proposed rule, among other things, described how information would be made available and the timing and procedures for public requests. See the March 28, 2011 notice for a description of the proposed rule.

II. This Final Rule and Discussion of Public Comments

The comment period closed on May 27, 2011, and the Council received comments from nine entities on the proposed rule. Comments were received from an insurance company, trade associations, a federal government agency, and consumer groups. This section of the preamble sets out significant comments raised, along with FSOC's responses to these comments, and identifies where the Council has made changes to the regulations.

Several commenters indicated that it was unclear whether FOIA requests could be submitted by electronic means. In response, the regulation has been modified throughout to clarify that FOIA requests may be submitted via the Internet and that online methods may be used throughout the FOIA process. Although it is likely that the Council will initially rely on a Web form to enable electronic receipt of FOIA requests, the Council anticipates that, eventually, email requests also could be accommodated.

Section 1301.2, as proposed, stated that, even though a FOIA exemption might apply, the Council could make discretionary disclosures if not precluded by law. Some commenters expressed concern that this provision would give the Council unfettered discretion and would result in the unnecessary disclosure of sensitive information. The Council is sympathetic to these concerns and, as suggested by the commenters, has modified the language to make clear that the Council will make discretionary disclosures after weighing the particular facts and circumstances of each request. In considering requests under the FOIA, the Council will carefully consider the balance between protecting sensitive information in accordance with the FOIA, and the public interest in disclosure. It will also take steps to assure consistent handling of multiple requesters for the same information.

Some commenters expressed concern about what they perceived as overly-strict procedural requirements in § 1301.5. The Council has revised this section of the rule to explicitly afford greater latitude for accepting and processing requests that contain one or more technical deficiencies. In particular, § 1301.5(d), as added in the final rule, provides that the Council may not reject a request solely because the request contains one or more technical deficiencies. Moreover, the regulation now more clearly states that requesters will be notified when their requests fail to meet the requirements that allow for adequate and timely processing.

Some commenters suggested that § 1301.5 should also be modified to make clear that fee waiver requests do not necessarily need to be included with the original FOIA request. Rather, commenters urged the Council to allow fee-waiver requests to be submitted at any time prior to the processing of the FOIA request. Accordingly, the Council modified § 1301.5(b)(7) to allow a requester to seek a fee waiver at a later time.

Regarding the procedures in § 1301.6 governing records originating from other agencies, some commenters suggested that referrals to other agencies be prohibited whereas others suggested that such referrals be required in all cases. The referral procedures as originally proposed are consistent with the statute and with case law, and FSOC has determined to retain those procedures. However, FSOC has modified § 1301.6 to more clearly describe how it will treat documents originated by federal agencies and state agencies.

In § 1301.8, governing the format of the agency's response to FOIA requests and its description of the records withheld, some commenters objected to the use of the word ''amount'' rather than ''volume,'' suggesting that FSOC would only be providing information regarding redactions within documents

that were released and would not be providing information regarding the number of responsive documents withheld in their entirety. That was not FSOC's intention, and the language has been modified to address this concern.

It was also suggested that § 1301.8 be modified to make clear that fees being assessed by FSOC will be broken down by search, review, and duplication fees. This commenter also suggested that the Council include a brief description of the subject of the request in acknowledgement letters. The Council agrees and these changes have been incorporated in this final rule.

Two commenters provided views on § 1301.10 related to requests for business information. One commenter urged the Council to modify the provision to state that business information provided by any submitter, not just a business submitter, should not be disclosed except as provided in § 1301.10. The Council agrees and has changed the references to ''business submitter'' to ''submitter.'' Another commenter recommended that the Council broaden the scope of protection of business information beyond Exemption 4 of the FOIA and eliminate the scaled-back notice in § 1301.10(d) if the number of submitters is voluminous. Although the FSOC appreciates these recommendations, it has determined that the proposed changes are not appropriate. The existing language is consistent with the FOIA and Executive Order 12600 (''Predisclosure notification procedures for confidential commercial information''). FSOC has, however, determined to omit the provision contained in § 1301.10(i)(4) of the proposed regulation that stated only limited notice would be provided if the designation made by the submitter appeared obviously frivolous. The omission is intended to simplify the predisclosure notification procedures.

Section 1301.11, governing administrative appeals, has been modified at the suggestion of the National Archives and Records Administration, Office of Government Information Services (''OGIS''), to remind requesters that OGIS's mediation services are available as a non-exclusive alternative to litigation.

With respect to § 1301.12, governing fees for processing requests for Council records, several commenters expressed the view that the listed duplication fees in the proposed regulations were too high and did not reasonably reflect the likely costs of duplication. The Council agrees and has reduced the listed fees to accurately reflect the direct costs of duplication.

Some commenters proposed that the FSOC proactively post online the calendars and travel records for high-level FSOC officials. However, the highest-level FSOC officials are the members of the Council, who generally are heads of other federal agencies. As such, the FSOC has concluded that this request is best directed, on a case-by-case basis, to the specific member agencies.

A couple of commenters proposed that the regulation should require the disclosure of all votes by members of the Council in Council proceedings. The Council has concluded that this is unnecessary because the Council is subject to the requirements of the FOIA, *see* 5 U.S.C. 552(a)(5), as well as the Council's official transparency policy, *see http://www.treasury.gov/initiatives/Documents/FSOCtransparencypolicy.pdf.*

Various other minor changes were made to the regulation—some in response to comments received. For example, in § 1301.7(e)(3), a sentence was added to indicate that if a request is disaggregated, the requester will be notified. In addition, the term ''deletion'' was replaced with the term ''redaction'' in § 1301.4, and the term ''governmental entity'' was removed from § 1301.12. Further, in § 1301.4, the reference to records ''clearly of interest to the public at large'' has been removed. Certain other suggestions from commenters were inconsistent with the requirements of the FOIA or outside the scope of this rulemaking and have not been adopted in this final rule.

III. Procedural Matters

A. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule establishes procedures for access to Council records under the Freedom of Information Act. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Council would be nominal and would not impose a significant economic impact on small entity requesters. Accordingly, a regulatory flexibility analysis is not required.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Section 3.f of Executive Order 12866.

List of Subjects in 12 CFR Part 1301

Freedom of information.

Financial Stability Oversight Council

Authority and Issuance

■ For the reasons set forth in the preamble, the Financial Stability Oversight Council adds a new part 1301 to 12 CFR chapter XIII to read as follows:

PART 1301—FREEDOM OF INFORMATION

Sec.

Authority: 12 U.S.C. 5322; 5 U.S.C. 552.

§ 1301.1 General.

This subpart contains the regulations of the Financial Stability Oversight Council (the ''Council'') implementing the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the Council. These regulations should be read together with the FOIA, which provides additional information about this topic.

§ 1301.2 Information made available.

(a) *General.* The FOIA provides for access to records developed or maintained by a Federal agency. The provisions of the FOIA are intended to assure the right of the public to information. Generally, this section divides agency records into three major categories and provides methods by which each category of records is to be made available to the public. The three major categories of records are as follows:

(1) Information required to be published in the **Federal Register** (see § 1301.3);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1301.4); and

(3) Information required to be made available to any member of the public upon specific request (see §§ 1301.5 through 1301.12).

(b) *Right of access.* Subject to the exemptions and exclusions set forth in

the FOIA (5 U.S.C. 552(b) and (c)), and the regulations set forth in this subpart, any person shall be afforded access to records.

(c) *Exemptions.* (1) The disclosure requirements of 5 U.S.C. 552(a) do not apply to certain records which are exempt under 5 U.S.C. 552(b); nor do the disclosure requirements apply to certain records which are excluded under 5 U.S.C. 552(c).

(2) Even though a FOIA exemption set forth in 5 U.S.C. 552(b) may apply to the record requested, the Council may, if not precluded by law, elect under the circumstances of that request not to apply the exemption. The fact that an exemption is not applied by the Council in response to a particular request shall have no precedential significance in processing other requests. This policy does not create any right enforceable in court.

§ 1301.3 Publication in the Federal Register.

Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)) and subject to the limitations provided in 5 U.S.C. 552(a)(1), the Council shall state, publish and maintain current in the **Federal Register** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Council; and

(e) Each amendment, revision, or repeal of matters referred to in paragraphs (a) through (d) of this section.

§ 1301.4 Public inspection and copying.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the Council shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, or, in the alternative, promptly publish and offer for sale:

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Council but which are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released previously to any person under 5 U.S.C. 552(a)(3) and §§ 1301.5 through 1301.12, and which the Council determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the Council receives three (3) or more requests for substantially the same records, then the Council shall place those requests in front of any existing processing backlog and make the released records available in the Council's public reading room and in the electronic reading room on the Council's Web site.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available online.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) and paragraphs (a)(1) through (4) of this section, the Council shall make such records available on its Web site as soon as practicable but in any case no later than one year after such records are created.

(c) *Redaction.* Based upon applicable exemptions in 5 U.S.C. 552(b), the Council may redact certain information contained in any matter described in paragraphs (a)(1) through (4) of this section before making such information available for inspection or publishing it. The justification for the redaction shall be explained in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction was made.

(d) *Public reading room.* The Council shall make available for public inspection and copying, in a reading room or otherwise, the material described in paragraphs (a)(1) through (5) of this section. Fees for duplication shall be charged in accordance with § 1301.12. The location of the Council's reading room is the Department of the Treasury's Library. The Library is located in the Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling (202) 622–0990.

(e) *Indices.* (1) The Council shall maintain and make available for public inspection and copying current indices identifying any material described in paragraphs (a)(1) through (3) of this section. In addition, the Council shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the Council determines by order published in the **Federal Register** that the publication would be unnecessary and impractical, in which case the Council shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(2) The Council shall make the indices referred to in paragraph (a)(5) and (e)(1) of this section available on its Web site.

§ 1301.5 Requests for Council records.

(a) *In general.* Except for records made available under 5 U.S.C. 552(a)(1) and (a)(2) and subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the Council shall promptly make its records available to any person pursuant to a request that conforms to the rules and procedures of this section.

(b) *Form and content of request.* A request for records of the Council shall be made as follows:

(1) The request for records shall be made in writing and submitted by mail or via the Internet and should state, both in the request itself and on any envelope that encloses it, that it comprises a Freedom of Information Act (FOIA) request. A request that does not explicitly state that it is a FOIA request, but clearly indicates or implies that it is a request for records, may also be processed under the FOIA.

(2) If a request is sent by mail, it shall be addressed and submitted as follows: FOIA Request—Financial Stability Oversight Council, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. If a request is made via the Internet, it shall be submitted as set forth on the Council's Web site.

(3) In order to ensure the Council's ability to respond in a timely manner, a FOIA request must describe the records that the requester seeks in sufficient detail to enable Council

personnel to locate them with a reasonable amount of effort. Whenever possible, the request must include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, the requester must include any file designations or descriptions for the records requested. In general, a requester is encouraged to provide more specific information about the records or types of records sought to increase the likelihood that responsive records can be located.

(4) The request shall include the name of and contact information for the requester, including a mailing address, telephone number, and, if available, an email address at which the Council may contact the requester regarding the request.

(5) For the purpose of determining any fees that may apply to processing a request, a requester shall indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or ''other'' requester, as those terms are defined in § 1301.12(c), or in the alternative, state how the records released will be used. The Council shall use this information solely for the purpose of determining the appropriate fee category that applies to the requester and shall not use this information to determine whether to disclose a record in response to the request.

(6) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect, pursuant to § 1301.12(f). Any request that does not seek a waiver or reduction of fees shall constitute an agreement of the requester to pay any and all fees (of up to $25) that may apply to the request, unless or until a request for waiver is sought and granted. The requester also may specify in the request an upper limit (of not less than $25) that the requester is willing to pay to process the request.

(i) Any request for waiver or reduction of fees should be filed together with or as part of the FOIA request, or at a later time prior to the Council incurring costs to process the request.

(ii) A waiver request submitted after the Council incurs costs will be considered in accordance with § 1301.12(f); however, the requester must agree in writing to pay the fees already incurred if the waiver is denied.

(7) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as is required by § 1301.7(c).

(c) *Request receipt; effect of request deficiencies.* The Council shall deem itself to have received a request on the date that it receives a complete request containing the information required by paragraph (b) of this section. The Council need not accept a request, process a request, or be bound by any deadlines in this subpart for processing a request that fails materially to conform to the requirements of paragraph (b) of this section. If the Council determines that it cannot process a request because the request is deficient, then the Council shall return it to the requester and advise the requester in what respect the request is deficient. The requester may then resubmit the request, which the Council shall treat as a new request. A determination by the Council that a request is deficient in any respect is not a denial of a request for records, and such determinations are not subject to appeal.

(d) *Processing of request containing technical deficiency.* Notwithstanding paragraph (c) of this section, the Council shall not reject a request solely due to one or more technical deficiencies contained in the request. For the purposes of this paragraph, the term ''technical deficiency'' means an error or omission with respect to an item of information required by paragraph (b) of this section which, by itself, does not prevent that part of the request from conforming to the applicable requirement, and includes without limitation a non-material error relating to the contact information for the requester, or similar error or omission regarding the date, title or name, author, recipient, or subject matter of the record requested.

§ 1301.6 Responsibility for responding to requests for Council records.

(a) *In general.* In determining which records are responsive to a request, the Council ordinarily will include only information contained in records that the Council maintains, or are in its possession and control, as of the date the Council begins its search for responsive records. If any other date is used, the Council shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The records officer shall be authorized to make an initial determination to grant or deny, in whole or in part, a request for a record.

(c) *Referrals.* When the Council receives a request for a record or any portion of a record in its possession that originated with another agency, including but not limited to a constituent agency of the Council, it shall:

(1) In the case of a record originated by a federal agency subject to the FOIA, refer the responsibility for responding to the request regarding that record to the originating agency to determine whether to disclose it; and

(2) In the case of a record originated by a state agency, respond to the request after giving notice to the originating state agency and a reasonable opportunity to provide input or to assert any applicable privileges.

(d) *Notice of referral.* Whenever the Council refers all or any part of the responsibility for responding to a request to another agency, the Council shall notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred.

§ 1301.7 Timing of responses to requests for Council records.

(a) *In general.* Except as set forth in paragraphs (b) through (d) of this section, the Council shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The Council may establish tracks to process separately simple and complex requests. The Council may assign a request to the simple or complex track based on the amount of work and/or time needed to process the request. The Council shall process requests in each track according to the order of their receipt.

(2) The Council may provide a requester in its complex track with an opportunity to limit the scope of the request to qualify for faster processing within the specified limits of the simple track(s).

(c) *Requests for expedited processing.* (1) The Council shall respond to a request out of order and on an expedited basis whenever a requester demonstrates a compelling need for expedited processing in accordance with the requirements of this paragraph (c).

(2) *Form and content of a request for expedited processing.* A request for expedited processing shall be made as follows:

(i) A request for expedited processing shall be made in writing or via the Internet and submitted as part of the initial request for records. When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked ''Expedited Processing Requested.'' A request for expedited processing that is not clearly so marked, but satisfies the requirements in § 1301.7(c)(2)(ii) and (iii), may nevertheless be granted.

(ii) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records. A ''compelling need'' may be established under the standard in either paragraph (c)(2)(ii)(A) or (B) of this section by demonstrating that:

(A) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Council may make a reasoned determination that a delay in obtaining the requested records would pose such a threat; or

(B) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American general public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(iii) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(3) *Determinations of requests for expedited processing.* Within ten (10) calendar days of its receipt of a request for expedited processing, the Council shall decide whether to grant the request and shall notify the requester of the determination in writing.

(4) *Effect of granting expedited processing.* If the Council grants a request for expedited processing, then the Council shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable. The Council may assign expedited requests to their own simple and complex processing tracks based upon the amount of work and/or time needed to process them. Within each such track, an expedited request shall be processed in the order of its receipt.

(5) *Appeals of denials of requests for expedited processing.* If the Council denies a request for expedited processing, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1301.11. The Council shall communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester shall clearly mark its appeal request and any envelope that encloses it with the words ''Appeal for Expedited Processing.''

(d) *Time period for responding to requests for records.* Ordinarily, the Council shall have twenty (20) days (excepting Saturdays, Sundays, and legal public holidays) from when a request that satisfies the requirements of § 1301.5(b) is received by the Council to determine whether to grant or deny a request for records. The twenty-day time period set forth in this paragraph shall not be tolled by the Council except that the Council may:

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty-day time period while it awaits the clarifying information; or

(2) Toll the twenty-day time period while awaiting receipt of the requester's response to the Council's request for clarification regarding the assessment of fees.

(e) *Unusual circumstances.* (1) *In general.* Except as provided in paragraph (e)(2) of this section, if the Council determines that, due to unusual circumstances, it cannot respond either to a request within the time period set forth in paragraph (d) of this section or to an appeal within the time period set forth in § 1301.11, the Council may extend the applicable time periods by informing the requester in writing of the unusual circumstances and of the date by which the Council expects to complete its processing of the request or appeal. Any extension or extensions of time shall not cumulatively total more than ten (10) days (exclusive of Saturdays, Sundays, and legal public holidays).

(2) *Additional time.* If the Council determines that it needs additional time beyond a ten-day extension to process the request or appeal, then the Council shall notify the requester and provide the requester with an opportunity to limit the scope of the request or appeal or to arrange for an alternative time frame for processing the request or appeal or a modified request or appeal. The requester shall retain the right to define the desired scope of the request or appeal, as long as it meets the requirements contained in this part.

(3) As used in this paragraph (e), ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components or component offices having substantial subject matter interest therein.

(4) Where the Council reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated. The Council may disaggregate and treat as separate requests a single request that has multiple unrelated components. The Council shall notify the requester if a request is disaggregated.

§ 1301.8 Responses to requests for Council records.

(a) *Acknowledgement of requests.* Upon receipt of a request that meets the requirements of § 1301.5(b), the Council ordinarily shall assign to the request a unique tracking number and shall send an acknowledgement letter or email to the requester that contains the following information:

(1) A brief description of the request;

(2) The applicable request tracking number;

(3) The date of receipt of the request, as determined in accordance with § 1301.5(c); and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to § 1301.12, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit (of not less than $25) that the requester is willing to pay in fees to process the request.

(b) *Initial determination to grant or deny a request.* (1) *In general.* The Council records officer (as designated in § 1301.6(b)) shall make initial determinations to grant or to deny in whole or in part requests for records.

(2) *Granting of request.* If the request is granted in full or in part, the Council shall provide the requester with a copy of the releasable records, and shall do so in the format specified by the requester to the extent that the records are readily producible by the Council in the requested format. The Council also shall send the requester a statement of the applicable fees, broken down by search, review and duplication fees, either at the time of the determination or shortly thereafter.

(3) *Denial of requests.* If the Council determines that the request for records should be denied in whole or in part, the Council shall notify the requester in writing. The notification shall:

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the volume of information redacted (including the number of pages withheld in part and in full) and the exemptions under which the redaction is made at the place in the record where such redaction is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with § 1301.11; and

(v) Specify the official or office to which such appeal shall be submitted.

(4) *No records found.* If it is determined, after an adequate search for records by the responsible official or his/her delegate, that no records could be located, the Council shall so notify the requester in writing. The notification letter also shall advise the requester of the right to administratively appeal the Council's determination that no records could be located (*i.e.,* to challenge the adequacy of the Council's search for responsive records) in accordance with § 1301.11. The response shall specify the official to whom the appeal shall be submitted for review.

§ 1301.9 Classified information.

(a) *Referrals of requests for classified information.* Whenever a request is made for a record containing information that has been classified, or may be appropriate for classification, by another agency under Executive Order 13526 or any other executive order concerning the classification of records, the Council shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by the Council because it contains information classified by another agency, the Council shall refer the responsibility for responding to the request regarding that information to the agency that classified the underlying information or shall consult with that agency prior to processing the record for disclosure or withholding.

(b) *Determination of continuing need for classification of information.* Requests for information classified pursuant to Executive Order 13526 require the Council to review the information to determine whether it continues to warrant classification. Information which no longer warrants classification under the Executive Order's criteria shall be declassified and made available to the requester, unless the information is otherwise exempt from disclosure.

§ 1301.10 Requests for business information provided to the Council.

(a) *In general.* Business information provided to the Council by a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means information from a submitter that is trade secrets or other commercial or financial information that may be protected from disclosure under Exemption 4.

(2) *Submitter* means any person or entity from whom the Council obtains business information, directly or indirectly. The term includes corporations, state, local, and tribal governments, and foreign governments.

(3) *Exemption 4* means Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(c) *Designation of business information.* A submitter of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten (10) years after the date of the submission unless the submitter on his or her own initiative requests otherwise, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Council shall provide a submitter with prompt written notice of receipt of a request or appeal encompassing the business information of the submitter whenever required in accordance with paragraph (e) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. When a voluminous number of submitters must be notified, the Council may post or publish such notice in a place reasonably likely to accomplish such notification.

(e) *When notice is required.* The Council shall provide a submitter with notice of receipt of a request or appeal whenever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Council has reason to believe that the information may be protected from disclosure under Exemption 4 because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.

(f) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, the Council shall notify the submitter in writing that the submitter shall have ten (10) days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide the Council with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under Exemption 4, including a statement of why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. In the event that the submitter fails to respond to the notice within the time specified, the submitter shall be considered to have no objection to disclosure of the information. Information provided by a submitter pursuant to this paragraph (f) may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the Council shall advise the requester that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the Council shall invite the requester to agree to an extension of time so that the

Council may review the submitter's objection to disclosure.

(g) *Notice of intent to disclose.* The Council shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information responsive to the request. If the Council decides to disclose business information over the objection of a submitter, the Council shall provide the submitter with a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten (10) days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been provided to the submitter. Except as otherwise prohibited by law, notice of the final decision to release the requested information shall be forwarded to the requester at the same time.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered in paragraph (c) of this section, the Council shall promptly notify the submitter.

(i) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Council determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1987 Comp., p. 235).

§ 1301.11 Administrative appeals.

(a) *Grounds for administrative appeals.* A requester may appeal an initial determination of the Council, including but not limited to a determination:

(1) To deny access to records in whole or in part (as provided in § 1301.8(b)(4));

(2) To assign a particular fee category to the requester (as provided in § 1301.12(c));

(3) To deny a request for a reduction or waiver of fees (as provided in § 1301.12(f)(7));

(4) That no records could be located that are responsive to the request (as provided in § 1301.8(b)(5)); or

(5) To deny a request for expedited processing (as provided in § 1301.7(c)(5)).

(b) *Time limits for filing administrative appeals.* An appeal, other than an appeal of a denial of expedited processing, must be submitted within thirty-five (35) days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later. An appeal of a denial of expedited processing must be made within ten (10) days of the date of the initial determination to deny expedited processing (see § 1301.7).

(c) *Form and content of administrative appeals.* The appeal shall—

(1) Be made in writing or via the Internet;

(2) Be clearly marked on the appeal request and any envelope that encloses it with the words ''Freedom of Information Act Appeal'' and addressed to Financial Stability Oversight Council, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220;

(3) Set forth the name of and contact information for the requester, including a mailing address, telephone number, and, if available, an email address at which the Council may contact the requester regarding the appeal;

(4) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed; and

(5) Set forth specific grounds for the appeal.

(d) *Processing of administrative appeals.* Appeals shall be stamped with the date of their receipt by the office to which addressed, and shall be processed in the approximate order of their receipt. The receipt of the appeal shall be acknowledged by the Council and the requester advised of the date the appeal was received and the expected date of response.

(e) *Determinations to grant or deny administrative appeals.* The Chairperson of the Council or his/her designee is authorized to and shall decide whether to affirm or reverse the initial determination (in whole or in part), and shall notify the requester of this decision in writing within twenty (20) days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to § 1301.7(e).

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be—

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that mediation services may be available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3).

(2) If the Council grants the appeal in its entirety, the Council shall so notify the requester and promptly process the request in accordance with the decision on appeal.

§ 1301.12 Fees for processing requests for Council records.

(a) *In general.* The Council shall charge the requester for processing a request under the FOIA in the amounts and for the services set forth in paragraphs (b) through (d) of this section, except if a waiver or reduction of fees is granted under paragraph (f) of this section, or if, pursuant to paragraph (e)(4) of this section, the failure of the Council to comply with certain time limits precludes it from assessing certain fees. No fees shall be charged if the amount of fees incurred in processing the request is below $25.

(b) *Fees chargeable for specific services.* The fees for services performed by the Council shall be imposed and collected as set forth in this paragraph (b).

(1) *Duplicating records.* The Council shall charge a requester fees for the cost of copying records as follows:

(i) $.15 per page, up to 8½ x 14″, made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The Council shall charge a requester for all time spent by its employees searching for records that are responsive to a request, including page-by-page or line-by-line identification of responsive information within records, even if no responsive records are found. The Council shall

charge the requester fees for search time as follows:

(i) *Searches for other than electronic records.* The Council shall charge for search time at the salary rate(s) (basic pay plus sixteen (16) percent) of the employee(s) who conduct the search. This charge shall also include transportation of employees and records at actual cost. Fees may be charged for search time even if the search does not yield any responsive records, or if records are exempt from disclosure.

(ii) *Searches for electronic records.* The Council shall charge the requester for the actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be the actual direct cost. For a requester in the ''other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.,* the operator), the charge for the computer search will begin.

(3) *Review of records.* The Council shall charge a requester for time spent by its employees examining responsive records to determine whether any portions of such record are withholdable from disclosure, pursuant to the FOIA exemptions of 5 U.S.C. 552(b). The Council shall also charge a requester for time spent by its employees redacting any such withholdable information from a record and preparing a record for release to the requester. The Council shall charge a requester for time spent reviewing records at the salary rate(s) (*i.e.,* basic pay plus sixteen (16) percent) of the employees who conduct the review. Fees may be charged for review time even if records ultimately are not disclosed.

(4) *Inspection of records in the reading room.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Council. Charges permitted under this paragraph may include:

(i) Certifying that records are true copies; and

(ii) Sending records by special methods (such as by express mail, etc.).

(c) *Fees applicable to various categories of requesters.* (1) *Generally.* The Council shall assess the fees set forth in paragraph (b) of this section in accordance with the requester fee categories set forth below.

(2) *Requester selection of fee category.* A requester shall identify, in the initial FOIA request, the purpose of the request in one of the following categories:

(i) *Commercial.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The Council may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution.* This refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. This category does not include requesters seeking records for use in meeting individual academic research or study requirements.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (c)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media.* This refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this paragraph (c)(2)(iv), the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by subscription or by free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news media entities. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Council may also consider the past publication record of the requester in making such a determination.

(v) *Other Requester.* This refers to a requester who does not fall within any of the categories described in paragraphs (c)(2)(i)–(iv) of this section.

(d) *Fees applicable to each category of requester.* The Council shall apply the fees set forth in this paragraph, for each category described in paragraph (c) of this section, to requests processed by the Council under the FOIA.

(1) *Commercial use.* A requester seeking records for commercial use shall be charged the full direct costs of searching for, reviewing, and duplicating the records they request as set forth in paragraph (b) of this section. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Council is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Council may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records or no records are located.

(2) *Educational and non-commercial scientific uses.* A requester seeking records for educational or non-commercial scientific use shall be charged only for the cost of duplicating the records they request, except that the Council shall provide the first one hundred (100) pages of duplication free of charge. To be eligible, the requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include a requester who seeks records for use in meeting individual academic research or study requirements.

(3) *News media uses.* A requester seeking records under the news media use category shall be charged only for the cost of duplicating the records they request, except that the Council shall provide the requester with the first one hundred (100) pages of duplication free of charge.

(4) *Other requests.* A requester seeking records for any other use shall be charged the full direct cost of

searching for and duplicating records that are responsive to the request, as set forth in paragraph (b) of this section, except that the Council shall provide the first one hundred (100) pages of duplication and the first two hours of search time free of charge. The Council may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located.

(e) *Other circumstances when fees are not charged.* Notwithstanding paragraphs (b), (c), and (d) of this section, the Council may not charge a requester a fee for processing a FOIA request if—

(1) Services were performed without charge;

(2) The cost of collecting a fee would be equal to or greater than the fee itself;

(3) The fees were waived or reduced in accordance with paragraph (f) of this section; or

(4) The Council fails to comply with any time limit under §§ 1301.7 or 1301.11, and no unusual circumstances (as that term is defined in § 1301.7(e)) or exceptional circumstances apply to the processing of the request; or

(5) The requester is an educational or noncommercial scientific institution or a representative of the news media (as described in paragraphs (c)(2)(ii) through (iv) of this section), then the Council shall not assess the duplication fees.

(f) *Waiver or reduction of fees.* (1) A requester shall be entitled to receive from the Council a waiver or reduction in the fees otherwise applicable to a FOIA request whenever the requester:

(i) Requests such waiver or reduction of fees in writing and submits the written request to the Council together with or as part of the FOIA request, or at a later time consistent with § 1301.5(b)(7) to process the request; and

(ii) Demonstrates that the fee reduction or waiver request is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (f)(1)(ii)(A) of this section, the Council shall consider:

(i) The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated;

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding;

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester satisfies the requirement of paragraph (f)(1)(ii)(B) of this section, the Council shall consider:

(i) Any commercial interest of the requester (with reference to the definition of ''commercial use'' in § 1301.12(c)(2)(i)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. In the administrative process, a requester may provide explanatory information regarding this consideration; and

(ii) Whether the public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Council ordinarily shall presume that, if a news media requester satisfies the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for those records.

(5) *Determination of request to reduce or waive fees.* The Council shall notify the requester in writing regarding its determinations to reduce or waive fees.

(6) *Effect of denying request to reduce or waive fees.* If the Council denies a request to reduce or waive fees, then the Council shall advise the requester, in the denial notification letter, that the requester may incur fees as a result of processing the request. In the denial notification letter, the Council shall advise the requester that the Council will not proceed to process the request further unless the requester, in writing, directs the Council to do so and either agrees to pay any fees that may apply to processing the request or specifies an upper limit (of not less than $25) that the requester is willing to pay to process the request. If the Council does not receive this written direction and agreement/specification within thirty (30) days of the date of the denial notification letter, then the Council shall deem the FOIA request to be withdrawn.

(7) *Appeals of denials of requests to reduce or waive fees.* If the Council denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1301.11. The Council shall communicate this appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester shall clearly mark its appeal request and any envelope that encloses it with the words ''Appeal for Fee Reduction/Waiver.''

(g) *Notice of estimated fees; advance payments.* (1) When the Council estimates the fees for processing a request will exceed the limit set by the requester, and that amount is less than $250, the Council shall notify the requester of the estimated costs, broken down by search, review and duplication fees. The requester must provide an agreement to pay the estimated costs, except that the requester may reformulate the request in an attempt to reduce the estimated fees.

(2) If the requester fails to state a limit and the costs are estimated to exceed $250, the requester shall be notified of the estimated costs, broken down by search, review and duplication fees, and must pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. Alternatively, the requester may reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) The Council reserves the right to request advance payment after a request is processed and before records are released.

(4) If a requester previously has failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the

full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or the pending request.

(5) When the Council acts under paragraphs (g)(1) through (4) of this section, the administrative time limits of twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after any applicable fees have been paid (in the case of paragraphs (g)(2), (g)(3), or (g)(4)), a written agreement to pay fees has been provided (in the case of paragraph (g)(1)), or a request has been reformulated (in the case of paragraphs (g)(1) or (g)(2)).

(h) *Form of payment.* Payment may be made by check or money order paid to the Treasurer of the United States.

(i) *Charging interest.* The Council may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Council. The Council will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(j) *Aggregating requests.* If the Council reasonably determines that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Council may aggregate those requests and charge accordingly. The Council may presume that multiple requests involving related matters submitted within a thirty (30) calendar day period have been made in order to avoid fees. The Council shall not aggregate multiple requests involving unrelated matters.

Dated: April 3, 2012.

Rebecca Ewing,

Acting Executive Secretary, Department of the Treasury.

[FR Doc. 2012–8625 Filed 4–10–12; 8:45 am]

BILLING CODE 4810–25–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1310

RIN 4030–AA00

Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Final rule and interpretive guidance.

SUMMARY: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') authorizes the Financial Stability Oversight Council (the ''Council'') to determine that a nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System (the ''Board of Governors'') and shall be subject to prudential standards, in accordance with Title I of the Dodd-Frank Act, if the Council determines that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States. This final rule and the interpretive guidance attached as an appendix thereto describe the manner in which the Council intends to apply the statutory standards and considerations, and the processes and procedures that the Council intends to follow, in making determinations under section 113 of the Dodd-Frank Act.

DATES: *Effective date:* May 11, 2012.

FOR FURTHER INFORMATION CONTACT: Lance Auer, Office of Domestic Finance, Treasury, at (202) 622–1262, or Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Dodd-Frank Act (12 U.S.C. 5321) established the Financial Stability Oversight Council. Among the purposes of the Council under section 112 of the Dodd-Frank Act (12 U.S.C. 5322) are ''(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.''

In the recent financial crisis, financial distress at certain nonbank financial companies contributed to a broad seizing up of financial markets and stress at other financial firms. Many of these nonbank financial companies were not subject to the type of regulation and consolidated supervision applied to bank holding companies, nor were there effective mechanisms in place to resolve the largest and most interconnected of these nonbank financial companies without causing further instability. To address any potential risks to U.S. financial stability posed by these companies, the Dodd-Frank Act authorizes the Council to determine that certain nonbank financial companies will be subject to supervision by the Board of Governors and prudential standards. The Board of Governors is responsible for establishing the prudential standards that will be applicable, under section 165 of the Dodd-Frank Act, to nonbank financial companies subject to a Council determination.

Title I of the Dodd-Frank Act defines a ''nonbank financial company'' as a domestic or foreign company that is ''predominantly engaged in financial activities,'' other than bank holding companies and certain other types of firms.[1] The Dodd-Frank Act provides that a company is ''predominantly engaged'' in financial activities if either (i) the annual gross revenues derived by the company and all of its subsidiaries from financial activities, as well as from the ownership or control of insured depository institutions, represent 85 percent or more of the consolidated annual gross revenues of the company; or (ii) the consolidated assets of the company and all of its subsidiaries related to financial activities, as well as related to the ownership or control of insured depository institutions, represent 85 percent or more of the consolidated assets of the company.[2] The Dodd-Frank Act requires the Board of Governors to establish the requirements for determining whether a company is ''predominantly engaged in financial activities'' for this purpose.[3]

The Council issued an advance notice of proposed rulemaking (the ''ANPR'') on October 6, 2010 (75 FR 61653), in

[1] *See* 12 U.S.C. 5311(a)(4).

[2] *See* 12 U.S.C. 5311(a)(6).

[3] *See* 12 U.S.C. 5311(b).

which it requested public comment on the application of the statutory factors that the Dodd-Frank Act requires the Council to consider in determining whether a nonbank financial company should be supervised by the Board of Governors and subject to prudential standards. The ANPR posed 15 questions, all of which addressed the application of the statutory considerations that the Council must take into account in the process of determining whether a nonbank financial company should be subject to supervision by the Board of Governors and be subject to prudential standards (the ''Determination Process'').

On January 26, 2011, the Council issued a notice of proposed rulemaking (the ''First NPR'') (76 FR 4555) through which it sought public comment regarding the specific criteria and analytic framework that the Council intends to apply in the Determination Process. The comment period for the First NPR closed on February 25, 2011.

In response to comments that the Council received on the First NPR, on October 18, 2011, the Council issued a second notice of proposed rulemaking (the ''NPR'') and proposed interpretive guidance (the ''Proposed Guidance'') (76 FR 64264) to provide (i) additional details regarding the framework that the Council intends to use in the process of assessing whether a nonbank financial company could pose a threat to U.S. financial stability, and (ii) further opportunity for public comment on the Council's proposed approach to the Determination Process.

The Council received 41 comment letters in response to the NPR and Proposed Guidance, of which 12 were from companies or trade associations in the insurance industry, eight were from companies or trade associations in the asset management industry, seven were from other financial or business trade associations, four were from specialty finance companies, and 10 were from law firms, advocacy groups, think tanks, and individuals.[4] (Comment letters are available online at *http://www.regulations.gov.*) In addition to issuing the ANPR, the First NPR, and the NPR and Proposed Guidance for public comment, staff of Council members and their agencies met with financial industry representatives to discuss the proposals. Meeting participants generally reiterated the views expressed in their comment submissions.

Commenters generally found that the NPR and Proposed Guidance provided helpful insight and transparency into the Council's approach to the Determination Process. Many commenters applauded the inclusion of a three-stage process for review of nonbank financial companies and the inclusion of sample metrics for the Council's analysis under its analytic framework. Some commenters suggested that the NPR and Proposed Guidance continued to provide an insufficient degree of certainty and transparency.[5]

As described below, the Council has carefully considered the comments received on the NPR and Proposed Guidance in developing the final rule and interpretive guidance.

II. Comments on Scope and Implementation of Determination Authority

A. Comments on Scope of Council Determinations

Many commenters addressed the types of nonbank financial companies that should be considered for determinations. Many commenters representing particular segments of the financial industry suggested that nonbank financial companies operating in those segments do not pose a threat to U.S. financial stability and should not generally be subject to a determination. For example, commenters representing the insurance industry argued that the products and services of regulated, traditional insurance companies are highly substitutable and that these companies operate without significant leverage or reliance on short-term debt and are subject to high levels of existing regulatory scrutiny. Commenters representing the asset management industry contended that asset managers are unlikely to pose a threat to U.S. financial stability, and some noted that the legal distinction between investment advisers and the funds they manage make the prudential standards contemplated by section 165 of the Dodd-Frank Act an inappropriate mechanism for addressing any threat posed by such firms. Others commented on behalf of financial guaranty insurers, captive finance companies, money market funds, and the Federal Home Loan Banks. The Council's determination with respect to a nonbank financial company will be based on an evaluation of whether the nonbank financial company meets the statutory standards, taking into account the statutory considerations set forth in section 113 of the Dodd-Frank Act. The Council does not intend to provide industry-based exemptions from potential determinations under section 113 of the Dodd-Frank Act, but the Council intends to give these comments due consideration in the Determination Process.[6]

In contrast, some commenters argued that the standard for determinations should be low, so that many nonbank financial companies may be subject to a determination. Other commenters suggested that particular types of nonbank financial companies, such as companies that serve as primary dealers or foreign banking organizations that reorganize their operations and deregister as bank holding companies in order to avoid new capital and liquidity requirements should automatically be considered by the Council.[7] As noted above, the Council's determination with respect to a nonbank financial company will be based on an application of the statutory standards, taking into account

[4] In addition, the Council received two comment letters dated March 8, 2012, requesting a public hearing or public roundtables on the NPR and Proposed Guidance. These letters also reiterated earlier substantive comments on the NPR and Proposed Guidance by a number of the letters' signatories. The writers acknowledged that these prior substantive comments were submitted and that the Council had received numerous comments to the NPR and Proposed Guidance on a wide range of concerns. In drafting the final rule and interpretive guidance, the Council has carefully considered all the comments received. Neither the Dodd-Frank Act nor the Administrative Procedure Act requires a public hearing on the NPR and Proposed Guidance prior to the issuance of the final rule and interpretive guidance. The letters requesting a hearing did not indicate why the opportunity to submit written comments was inadequate for commenters to participate fully in the rulemaking process. Accordingly, the Council has determined that a public hearing or roundtable is not necessary prior to adopting the final rule and interpretive guidance.

[5] In addition, one commenter recommended that the Council abandon this rulemaking entirely; the Council has declined to do so, for the reasons described below. Consistent with the Council's intended approach, two other commenters recommended that the determination process be implemented as soon as possible.

[6] Pursuant to section 170 of the Dodd-Frank Act, the Board of Governors is authorized to promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of nonbank financial companies from supervision by the Board of Governors. *See* 12 U.S.C. 5370.

[7] The Council notes that a foreign bank that is a bank holding company or that operates a branch or agency in the United States is subject to consolidated supervision by the Board of Governors and would be subject to the enhanced prudential standards to be adopted by the Board of Governors under section 165 of the Dodd-Frank Act, resolution planning requirements, and early remediation requirements to be adopted by the Board of Governors under section 166 of the Dodd-Frank Act if it has total consolidated worldwide assets of at least $50 billion. *See* 76 FR 67323, at 67326 (Nov. 1, 2011) for a discussion of the application of resolution-planning requirements to foreign banks. A foreign bank that has a financial but not a banking presence in the United States may not be subject to consolidated supervision by the Board of Governors and consequently, may not be subject to these requirements, regardless of its size, unless the Council were to make a determination with respect to such company pursuant to section 113 of the Dodd-Frank Act.

the considerations set forth in section 113 of the Dodd-Frank Act, to the facts regarding that nonbank financial company.

As noted above under ''Background,'' Title I of the Dodd-Frank Act defines a ''nonbank financial company'' as a domestic or foreign company that is ''predominantly engaged in financial activities,'' with certain exceptions. The guidance notes that the Council intends to interpret the term ''company'' broadly with respect to nonbank financial companies and other companies in connection with section 113 of the Dodd-Frank Act, to include any corporation, limited liability company, partnership, business trust, association, or similar organization. In response to commenter concerns, the Council clarifies that it does not generally intend to encompass unincorporated associations within the definition of ''company.'' One commenter suggested that the rule include a definition of ''company.'' The Council has determined that adding this definition to the rule would not be consistent with the focus of the rule on issues of Council procedure and practice, but the Council's intended interpretation of this term has been included in the interpretive guidance. Other commenters argued that the definition of ''nonbank financial company'' should include financial businesses owned by another company that engage in separate, unrelated financial transactions, or that open-end investment companies might not be included within the statutory definition of ''nonbank financial company.'' The Board of Governors has authority to issue regulations regarding the requirements for determining if a company is predominantly engaged in financial activities, and thus potentially a nonbank financial company, and has issued a proposed rule under this authority.

B. Comments on Coordination With Other Regulatory Activities

A number of commenters requested that the Council delay this rulemaking until other, related regulatory activities are completed. The other regulatory activities cited were (i) the requirements for determining if a company is ''predominantly engaged in financial activities'' under section 102 of the Dodd-Frank Act; (ii) the adoption of enhanced prudential standards applicable under section 165 of the Dodd-Frank Act to nonbank financial companies subject to a Council determination; (iii) the rule regarding the establishment of an intermediate holding company under section 626 of the Dodd-Frank Act; (iv) the rules further defining ''major swap participant'' and ''major security-based swap participant'' under Title VII of the Dodd-Frank Act; (v) the Council's regulations implementing the Freedom of Information Act (''FOIA''); (vi) safe harbors from Board of Governors supervision under section 170 of the Dodd-Frank Act; and (vii) recommendations of the Council for additional standards applicable to activities or practices under section 120 of the Dodd-Frank Act.

The regulatory activities cited by commenters are in various stages of the rulemaking process, including the Council's FOIA regulations, which the Council adopted on April 3, 2012. The Council does not believe it is necessary or appropriate to postpone the adoption of this rule or the interpretive guidance until these other regulatory actions are completed. These rulemakings are not essential to the Council's consideration of whether a nonbank financial company could pose a threat to U.S. financial stability, and the Council has the statutory authority to proceed with determinations under section 113 of the Dodd-Frank Act prior to the adoption of such rules.

In addition, several commenters urged the Council to coordinate the issuance of the rule and interpretive guidance with G–20-mandated efforts being undertaken by international bodies, such as the Financial Stability Board and the International Association of Insurance Supervisors, or to postpone the Determination Process until broader U.S. and international financial reforms have been implemented. Council members are working closely with their international counterparts on a number of initiatives, including the process for identifying globally systemically important financial institutions and financial market infrastructures. At the same time, the Council's determinations under section 113 of the Dodd-Frank Act are an important part of the U.S. financial reform process, and the Council believes it is important for this framework to be in place as soon as practicable.

III. Description of the Rule and the Interpretive Guidance

In developing the rule and interpretive guidance, the Council has carefully considered the comments received on the NPR and Proposed Guidance, as well as the language and legislative history of the Dodd-Frank Act. After this review, the Council is adopting the rule and interpretive guidance substantially as proposed, but with a number of clarifications in response to commenter concerns.

The rule sets forth the procedures and practices for the Council's determinations regarding nonbank financial companies, including the statutory considerations and procedures for information collection and hearings.

The interpretive guidance, which is attached as an appendix to the rule, addresses, among other things—

- Key terms and concepts related to the Council's determination authority, including ''material financial distress'' and ''threat to financial stability'';
- The uniform quantitative thresholds that the Council intends to use to identify nonbank financial companies for further evaluation;
- The six-category framework that the Council intends to use to consider whether a nonbank financial company meets either of the statutory standards for a determination, including examples of quantitative metrics for assessing each category; and
- The process that the Council intends to follow when considering whether to subject a nonbank financial company to supervision by the Board of Governors and prudential standards.

To foster transparency with respect to the Determination Process, the rule and interpretive guidance provide a detailed description of (i) the profile of those nonbank financial companies that the Council likely will evaluate for potential determination, so as to minimize uncertainty among nonbank financial companies, market participants, and other members of the public, and (ii) the factors that the Council intends to use when analyzing companies at various stages of the Determination Process, including examples of the metrics that the Council intends to use when evaluating a nonbank financial company under the six-category analytic framework. The Council's ultimate assessment of whether a nonbank financial company meets a statutory standard for determination will be based on an evaluation of each of the statutory considerations, taking into account facts and circumstances relevant to each nonbank financial company.

The Council has numerous authorities and tools to carry out its statutory duty to monitor the financial stability of the United States. In addition to the Council's determination authority under section 113 of the Dodd-Frank Act, the Council has the authority to make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under

the jurisdiction of such agencies if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, U.S. financial markets, or low-income, minority, or underserved communities.[8] In addition, the Council may designate financial market utilities and payment, clearing and settlement activities that the Council determines are, or are likely to become, systemically important.[9] The Council expects that its response to any potential threat to financial stability will be based on an assessment of the circumstances.

Pursuant to section 115(a) of the Dodd-Frank Act, the Council may also make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors pursuant to section 113 of the Dodd-Frank Act. In making such recommendations, the Dodd-Frank Act also authorizes the Council to differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate. In addition, section 165 of the Dodd-Frank Act gives the Board of Governors the ability to tailor the application of the prudential standards on its own.

Several commenters supported the recognition in the NPR of the Council's numerous authorities and tools to carry out its statutory duties. Commenters also urged the Council to perform, in connection with each potential determination with respect to a nonbank financial company, a comparative cost-benefit analysis of the tools available to the Council to mitigate any identified threat posed by the company. Some commenters further suggested that the Council provide this analysis to the nonbank financial company, explaining why a determination is the best available tool to mitigate the threat. Section 113 of the Dodd-Frank Act sets forth the factors that the Council must consider in determining whether to subject a nonbank financial company to Board of Governors supervision and prudential standards. The relative cost and benefit of such a determination is not one of these statutory considerations. Therefore, while the Council expects to consider its available regulatory tools in addressing any potential threat to financial stability, the Council does not intend to conduct cost-benefit analyses in making determinations with respect to individual nonbank financial companies.

The rule and interpretive guidance, as well as the Council's responses to the comments received, are discussed in greater detail below.

A. Statutory Determination Standards and Considerations

Section 113 of the Dodd-Frank Act authorizes the Council to subject a nonbank financial company to supervision by the Board of Governors and prudential standards if the Council determines that (i) material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States (the ''First Determination Standard''), or (ii) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States (the ''Second Determination Standard'').

Pursuant to the provisions of the Dodd-Frank Act, the Council is required to consider the following statutory considerations when evaluating whether to make this determination with respect to a nonbank financial company: [10]

(A) The extent of the leverage of the company;

(B) The extent and nature of the off-balance-sheet exposures of the company;

(C) The extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) The importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the U.S. financial system;

(E) The importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) The extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) The degree to which the company is already regulated by one or more primary financial regulatory agencies;

(I) The amount and nature of the financial assets of the company;

(J) The amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) Any other risk-related factors that the Council deems appropriate.

The Council intends to take into account all of the statutory considerations, separately and in conjunction with each other, when determining whether either of the statutory standards for determination has been met. The Council included each of the statutory considerations in the NPR and has retained this text in the rule. The interpretive guidance provides detail regarding the manner in which the Council intends to assess nonbank financial companies under the First and Second Determination Standards.[11] The interpretive guidance sets forth definitions of the terms ''material financial distress,'' which is relevant to the First Determination Standard, and ''threat to the financial stability of the United States,'' which is relevant to both determination standards.

Commenters requested further clarification of the Council's interpretation of certain relevant definitions underlying the First and Second Determination Standards, such as the addition of quantitative metrics to measure material financial distress and a threat to U.S. financial stability. In addition, two commenters recommended that ''threat to the financial stability of the United States'' be defined narrowly, as a high threshold for the Council's determinations. The Council believes that these definitions accurately reflect the statutory requirements and the nature of the threat that the Council's authority under section 113 of the Dodd-Frank Act seeks to mitigate. The interpretive guidance therefore includes these definitions as proposed.

[8] *See* 12 U.S.C. 5330(a).

[9] *See* 12 U.S.C. 5463(a)(1).

[10] This list reflects the statutory considerations applicable to a determination with respect to a U.S. nonbank financial company. The Council is required to consider corresponding factors in making a determination with respect to a foreign nonbank financial company.

[11] While one commenter suggested that the Council should disregard the Second Determination Standard, the Council intends to evaluate nonbank financial companies under either the First or the Second Determination Standard, in accordance with section 113 of the Dodd-Frank Act, as the Council deems appropriate.

The interpretive guidance also describes three channels the Council believes are most likely to facilitate the transmission of the negative effects of a nonbank financial company's material financial distress or activities to other firms and markets, thereby posing a threat to U.S. financial stability: (i) Exposure of creditors, counterparties, investors, or other market participants to a nonbank financial company; (ii) disruptions caused by the liquidation of a nonbank financial company's assets; and (iii) the inability or unwillingness of a nonbank financial company to provide a critical function or service relied upon by market participants and for which there are no ready substitutes.

A number of commenters requested further clarification of the three transmission channels. These commenters suggested that the Council provide identifying metrics and explicit links between the channels and the statutory considerations. To address these requests, the interpretive guidance provides some additional clarification describing how the Council expects its assessments under the First and Second Determination Standards to relate to the transmission channels and the statutory considerations. However, due to the unique threat that each nonbank financial company may pose to U.S. financial stability and the qualitative nature of the inquiry under the statutory considerations, it is not possible to provide broadly applicable metrics defining these channels or to identify universally applicable links between the channels and the statutory considerations.

Two commenters also objected to the inclusion in the third transmission channel of a nonbank financial company's ability or willingness to provide a critical function or service, arguing that regulators should not interfere with companies' business decisions in this regard. Substitutability is an important consideration for evaluating the importance of a financial company. If a nonbank financial company is the sole provider, or one of a small number of providers, of a critical market function or service, the Council believes that it is appropriate to consider the impact a decision by the company to cease providing that function or service could have on other market participants or market functioning and, thereby, on U.S. financial stability.

B. Analytic Framework for Determinations

As described in the Proposed Guidance, the Council has incorporated the statutory considerations for evaluating whether a nonbank financial company meets either the First or Second Determination Standard into an analytic framework consisting of the following six categories: (i) Size, (ii) interconnectedness, (iii) substitutability, (iv) leverage, (v) liquidity risk and maturity mismatch, and (vi) existing regulatory scrutiny. Three of these six categories seek to assess the potential impact of a nonbank financial company's financial distress on the broader economy: size, interconnectedness, and substitutability. The remaining three categories seek to assess the vulnerability of a nonbank financial company to financial distress: leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny. The interpretive guidance contains the table from the Proposed Guidance that illustrates the relationship between the 10 statutory considerations and the six framework categories.

Most commenters addressed these six categories either in the context of a particular financial sector (as described above under ''Comments on Scope and Implementation of Determination Authority'') or with respect to the proposed uniform quantitative thresholds that the Council intends to use to identify nonbank financial companies for further evaluation (as described below under ''The Stage 1 Thresholds''). Of the commenters that specifically addressed the analytic framework, several recommended that substitutability either be narrowed to focus on nonbank financial companies that provide a critical function or service, or be broadened to encompass circumstances such as oligopolies and potential future business changes. The Council is adopting the description of substitutability as proposed, because the Council believes it accurately delineates the primary factors that may cause a lack of substitutability to pose a threat to U.S. financial stability.

Several commenters also urged the Council to give significant weight in its evaluations to existing regulatory scrutiny. In particular, one commenter argued that a nonbank financial company operating internationally should only have one lead supervisor, to ensure consistent supervision. Several other commenters advised that the effectiveness of existing regulation, or a consideration of existing regulations in light of the potential threat posed by a particular nonbank financial company, should be evaluated. As existing regulatory scrutiny is one of the statutory considerations, the Council intends to evaluate this factor, together with each of the other statutory considerations, in connection with any determination. In response to these comments, the interpretive guidance has been revised to clarify that the Council will consider both the existence and the effectiveness of consolidated supervision of a nonbank financial company.

A number of commenters provided detailed recommendations regarding the analysis of companies within particular industries under the six-category analytic framework in Stages 2 and 3. For example, commenters highlighted the differences between insurance companies and other types of nonbank financial companies. These comments addressed issues such as the importance of focusing on the unregulated, nontraditional activities undertaken by insurance companies, rather than on regulated activities. One commenter suggested that the analysis of interconnectedness of insurance companies should focus on interconnectedness within a financial services conglomerate and between a U.S. insurance company and foreign entities. Others recommended technical changes to the types of information described in the interpretive guidance that the Council may consider in evaluating insurance companies. With respect to all the comments on industry-specific analyses, the evaluation of any nonbank financial company under the six-category framework will be company-specific, and the description in the interpretive guidance is intended to indicate the types of information that the Council will consider. The Council has not revised the interpretive guidance to address these comments but intends to consider such factors, where appropriate.

In response to a commenter, the interpretive guidance clarifies that the risk of interest rate fluctuations and reinvestment risk may be considered in evaluating maturity mismatch of life insurance companies.

C. Three-Stage Process for Evaluating Nonbank Financial Companies

1. Overview of the Three-Stage Process

The interpretive guidance provides a detailed description of the three-stage process that the Council intends to use to identify nonbank financial companies for determinations in non-emergency situations. Each stage of the Determination Process involves an analysis based on an increasing amount of information to determine whether a nonbank financial company meets the First or Second Determination Standard.

The first stage of the process (''Stage 1'') is designed to narrow the universe

of nonbank financial companies to a smaller set of nonbank financial companies. In Stage 1, the Council intends to evaluate nonbank financial companies by applying uniform quantitative thresholds that are broadly applicable across the financial sector to a large group of nonbank financial companies. These Stage 1 thresholds represent the framework categories that are more readily quantified: Size, interconnectedness, leverage, and liquidity risk and maturity mismatch.[12] A nonbank financial company would be subject to additional review if it meets both the size threshold and any one of the other quantitative thresholds. The Council believes that the Stage 1 thresholds will help a nonbank financial company predict whether such company will be subject to additional review by the Council. Stage 1 does not reflect a determination by the Council that the nonbank financial companies identified during Stage 1 meet one of the Determination Standards. Rather, Stage 1 is intended to identify nonbank financial companies that should be subject to further evaluation in subsequent stages of review.

In the second stage of the process (''Stage 2''), the Council will conduct a comprehensive analysis, using the six-category analytic framework, of the potential for the nonbank financial companies identified in Stage 1 to pose a threat to U.S. financial stability. In general, this analysis will be based on a broad range of quantitative and qualitative information available to the Council through existing public and regulatory sources, including industry- and company-specific metrics beyond those analyzed in Stage 1, and any information voluntarily submitted by the company.

Based on the analysis conducted during Stage 2, the Council intends to identify the nonbank financial companies that the Council believes merit further review in the third stage (''Stage 3''). The Council will send a notice of consideration to each nonbank financial company that will be reviewed in Stage 3, and will give those nonbank financial companies an opportunity to submit materials within a time period specified by the Council (which will be not less than 30 days). Stage 3 will build on the Stage 2 analysis using quantitative and qualitative information collected directly from the nonbank financial company, generally by the Office of Financial Research (the ''OFR''), in addition to the information considered during Stages 1 and 2. The Council will determine whether to subject a nonbank financial company to Board of Governors supervision and prudential standards based on the results of the analyses conducted during this three-stage review process.

As discussed in the interpretive guidance, the Council does not believe that a determination decision can be reduced to a formula. Each determination will be made based on a company-specific evaluation and an application of the standards and considerations set forth in section 113 of the Dodd-Frank Act, and taking into account qualitative and quantitative information that the Council deems relevant to a particular nonbank financial company.

2. Stage 1

As described in the interpretive guidance, in Stage 1, the Council intends to apply quantitative thresholds to a broad group of nonbank financial companies to identify a set of nonbank financial companies that merit further evaluation.

Many commenters commended the inclusion of Stage 1 in the Proposed Guidance. A smaller number of commenters objected to the Stage 1 process generally, stating either that the thresholds will capture too many or too few nonbank financial companies, or that the thresholds are not focused on activities that could cause a threat to financial stability. In addition, several commenters proposed that nonbank financial companies should be subject to further review only if they exceed at least two Stage 1 thresholds, rather than only one, in addition to the total consolidated assets threshold (described below). One commenter suggested that Stages 1 and 2 could be combined in instances when it is clear that a nonbank financial company may meet either the First or Second Determination Standard. Based on its analysis, the Council believes the Stage 1 approach as proposed, with certain clarifications, is appropriate. Stage 1 is not intended to identify nonbank financial companies for a final determination. Instead, Stage 1 is a tool that the Council, nonbank financial companies, market participants, and other members of the public may use to assess whether a nonbank financial company will be subject to further evaluation by the Council. Any nonbank financial company that is selected for further evaluation during Stage 1 will be assessed more comprehensively during Stage 2 and, if appropriate, Stage 3. In addition to its other benefits, the careful, company-specific analysis in Stages 2 and 3 avoids any possible ''cliff effects'' for nonbank financial companies that narrowly exceed the Stage 1 thresholds.

The Council considered several approaches for Stage 1 other than the thresholds-based approach described in the interpretive guidance. Alternatives that were considered included a weighting of various metrics according to relative importance, and a multi-step, quantitative analysis under which progression through the analysis would have required meeting certain thresholds in each step. These approaches attempted to tailor the Stage 1 analysis more specifically to the various types of nonbank financial companies and to customize the factors to address narrower concepts of a threat to U.S. financial stability. In contrast to these alternative approaches, the Council determined that the thresholds-based approach set forth in the interpretive guidance offers greater transparency, consistency, and ease of application for the Council, nonbank financial companies, market participants, and other members of the public, and requires less reliance on subjective assumptions. A tailored analysis will be performed, potentially using the approaches described above, with respect to individual nonbank financial companies, as appropriate, in Stages 2 and 3. This approach will enable the Council to engage in a flexible, company-specific analysis that will reflect the unique risks posed by each nonbank financial company.

In all instances, the Council reserves the right, at its discretion, to subject any nonbank financial company to further review if the Council believes that further analysis of the company is warranted to determine if the company could pose a threat to U.S. financial stability, irrespective of whether such company meets the thresholds in Stage 1. Several commenters commended the Council's reservation of authority, while others suggested that the Council's reservation of authority will generate uncertainty or was otherwise inappropriate. As noted above, the Stage 1 thresholds are intended only to identify nonbank financial companies for further evaluation. However, the Council recognizes that all relevant data are likely not available to assess all nonbank financial companies using the Stage 1 quantitative thresholds and that the thresholds are an imperfect mechanism to identify all nonbank financial companies of which further review is warranted. While the thresholds were designed to be uniform,

[12] The Council believes that quantitative thresholds measuring substitutability and existing regulatory scrutiny would not be appropriate and intends to rely on company-specific qualitative and quantitative analyses of these factors in Stages 2 and 3.

transparent, and readily calculable by the Council, nonbank financial companies, market participants, and other members of the public, the Council also recognizes that the thresholds may not adequately measure unique risks posed by particular nonbank financial companies. Therefore, the Council retains its discretion to consider nonbank financial companies not identified by the Stage 1 thresholds for any reason, including a lack of available data in Stage 1.

Commenters also suggested that the Council should provide an explanation of the basis for the Council's evaluation of any nonbank financial company that is reviewed in Stage 2 but did not exceed the Stage 1 thresholds. Any nonbank financial company that the Council determines should be reviewed during Stage 3 will receive notice of this review. If the Council determines by vote to subject a nonbank financial company to a proposed determination, the Council will provide the nonbank financial company with notice and an explanation of the basis of the proposed determination, as described below.

Several commenters addressed the collection of data from nonbank financial companies in Stage 1. While some commenters sought clarification of how the Council would collect data for Stage 1, particularly in cases where the data underlying the Stage 1 thresholds is not available, others urged the Council expressly to reserve the right to collect data from nonbank financial companies in Stage 1, to avoid any failure to identify a nonbank financial company that should be evaluated further. A fundamental purpose of Stage 1 is to narrow the universe of nonbank financial companies, based on information available to the Council through existing public and regulatory sources, to a smaller set of companies that will be subject to company-specific evaluation in Stage 2. The Council recognizes that all relevant data are likely not available to assess all nonbank financial companies using the Stage 1 thresholds. Therefore, the Council may subject a nonbank financial company to further review in Stage 2 if the Council believes that further analysis is warranted, for any reason, to determine if the company could pose a threat to U.S. financial stability.

3. The Stage 1 Thresholds

In Stage 1, the Council intends to apply six quantitative thresholds to a broad group of nonbank financial companies. The thresholds are—

- $50 billion in total consolidated assets;
- $30 billion in gross notional credit default swaps outstanding for which a nonbank financial company is the reference entity;
- $3.5 billion of derivative liabilities;
- $20 billion in total debt outstanding;
- 15 to 1 leverage ratio of total consolidated assets (excluding separate accounts) to total equity; and
- 10 percent short-term debt ratio of total debt outstanding with a maturity of less than 12 months to total consolidated assets (excluding separate accounts).

A nonbank financial company will be evaluated in Stage 2 if it meets both the total consolidated assets threshold and any one of the other thresholds.

Many commenters provided detailed recommendations regarding the six Stage 1 thresholds. These comments generally fall into three categories: (i) The level of a threshold should be changed; (ii) the method of calculating a threshold should be refined; and (iii) a threshold generally is inappropriate. A smaller number of commenters suggested new Stage 1 thresholds.

Commenters suggested that the Council tailor the thresholds by industry to provide a more accurate indication of the threat to U.S. financial stability that could be posed by a nonbank financial company in a particular industry. The Council recognizes that the quantitative thresholds it has identified for application during Stage 1 may not provide a comprehensive means to identify nonbank financial companies for further review across all financial industries and companies. However, the Stage 1 thresholds provide a reasonable set of measures for identifying nonbank financial companies that, in general, warrant further review. In addition, because many nonbank financial companies engage in financial activities across multiple segments of the financial markets, the application of specialized industry-specific thresholds to nonbank financial companies is not generally useful. Industry- and company-specific considerations are better evaluated during Stages 2 and 3, when more detailed information can be collected and more tailored analysis can be performed.

Several commenters requested additional information on how the Stage 1 thresholds were selected and suggested alternative measures that could be used. The Council selected the Stage 1 thresholds based on their applicability to nonbank financial companies that operate in diverse financial industries and because the data underlying these thresholds for a broad range of nonbank financial companies are generally available from existing public and regulatory sources. The Council reviewed distributions of various samples of nonbank financial companies and bank holding companies to inform its judgment regarding the appropriate thresholds and their quantitative levels. As discussed in the interpretive guidance, the Council also considered historical testing of the thresholds to assess whether they would have captured nonbank financial companies that encountered material financial distress during the financial crisis of 2007–2008. In this review, the Council focused separately on the period immediately before the crisis and also a number of years preceding it. While some commenters argued that historical analyses are not a sufficient justification for determining appropriate levels of thresholds, this approach, when combined with other analytical methods, can be a helpful tool for evaluating potential thresholds. After considering the comments on the Stage 1 thresholds, including those recommending the elimination of particular thresholds, the Council has determined to finalize the thresholds largely as proposed. The Stage 1 thresholds and their levels reflect the collective judgment of the Council members regarding the appropriate thresholds and their levels, in light of the statutory standards and considerations and an extensive review of applicable data and various analyses. The Stage 1 thresholds do not reflect a determination that the identified nonbank financial companies meet one of the Determination Standards, or that nonbank financial companies that do not meet the thresholds will not be designated. Rather, they are designed to identify nonbank financial companies for further evaluation based on the statutory standards and considerations.

While the Council will apply the Stage 1 thresholds to all types of nonbank financial companies, including, to the extent that the relevant data are available, to financial guarantors, asset management companies, private equity firms, and hedge funds, these and other types of companies may pose risks that are not well-measured by the quantitative thresholds approach.

With respect to hedge funds and private equity firms in particular, the Council intends to apply the Stage 1 thresholds, but recognizes that less data are generally available about these companies than about certain other types of nonbank financial companies. Beginning in June 2012, advisers to

hedge funds and private equity firms and commodity pool operators and commodity trading advisors will be required to file Form PF with the Securities and Exchange Commission (''SEC'') or the Commodity Futures Trading Commission (''CFTC''), as applicable, on which form such companies will make certain financial disclosures. Using these and other data, the Council will consider whether to establish an additional set of metrics or thresholds tailored to evaluate hedge funds and private equity firms and their advisers.

In addition, the Council, its member agencies, and the OFR are analyzing the extent to which there are potential threats to U.S. financial stability arising from asset management companies. This analysis is considering what threats exist, if any, and whether such threats can be mitigated by subjecting such companies to Board of Governors supervision and prudential standards, or whether they are better addressed through other regulatory measures. The Council may develop additional guidance regarding potential metrics and thresholds relevant to determinations regarding asset managers, as appropriate. Commenters voiced both support for and opposition to the implementation of new metrics and thresholds applicable to asset managers. While the Council intends to address such issues at a later date, consistent with the intention described above not to provide exemptions under section 113 of the Dodd-Frank Act for any type of nonbank financial company, the Council intends to evaluate asset managers under the current interpretive guidance.

Generally, as reporting requirements evolve and new information about certain industries and nonbank financial companies become available, the Council expects to review the quantitative thresholds as appropriate based on this new information. For example, the Council may consider credit exposure data proposed to be collected under section 165 of the Dodd-Frank Act by the Federal Deposit Insurance Corporation and the Board of Governors. Similarly, pursuant to reporting and disclosure requirements being implemented under section 728 of the Dodd-Frank Act,[13] the Council may consider swaps information reported to swap data repositories.

The Council recognizes that the Stage 1 threshold to measure a nonbank financial company's derivative liabilities captures only the current exposure, rather than the current and potential future exposure created by the nonbank financial company's outstanding derivatives. The SEC and CFTC have proposed rules to further define the terms ''major swap participant'' (''MSP'') and ''major security-based swap participant'' (''MSBSP'') that contain a methodology to measure the potential future exposure created by an entity's outstanding derivatives, with respect to certain institutions.

Once the final rules regarding reporting of data on swaps and security-based swaps come into effect, and data have been collected pursuant to those rules, the Council may revisit this Stage 1 threshold based on factors such as a nonbank financial company's current and potential future exposure from its outstanding derivatives for purposes of determining whether some or all MSPs, MSBSPs, or other nonbank financial companies that are subject to the rules will be subject to further examination in Stage 2.

In addition, in response to comments, the Council has made several clarifying changes to the interpretive guidance with respect to the Stage 1 thresholds. The Proposed Guidance included a ''loans and bonds outstanding'' threshold of $20 billion. A number of commenters requested a clarification of the types of obligations and instruments that would be included in the calculation of this threshold. In response to these comments, the Council has renamed this threshold ''total debt outstanding.'' The interpretive guidance now also specifies that this threshold will be defined broadly and regardless of maturity to include loans, bonds, repurchase agreements, commercial paper, securities lending arrangements, surplus notes (for insurance companies), and other forms of indebtedness. The interpretive guidance has also been revised to clarify that this definition of ''total debt outstanding'' will be used in calculating the short-term debt ratio threshold.

In response to questions from two commenters regarding the Council's data source for the threshold relating to credit default swaps outstanding, the Council currently intends to calculate this threshold using data available through the Trade Information Warehouse, which is operated by a subsidiary of the Depository Trust & Clearing Corporation. If other sources for this data become available, the Council may use those sources instead of, or in addition to, this source.

Further, to respond to comments, the interpretive guidance clarifies that in calculating the derivative liabilities threshold for nonbank financial companies that disclose the effects of master netting agreements and cash collateral held with the same counterparty on a net basis, the Council intends to calculate derivative liabilities after taking into account the effects of these arrangements. For nonbank financial companies that do not disclose the effects of these arrangements, derivative liabilities will equal the fair value of derivative contracts in a negative position. For Stages 2 and 3, the impact of netting will be considered as appropriate.

Several commenters suggested that embedded derivatives be excluded from the definition of derivative liabilities, particularly for insurance companies or insurance products. Under statutory accounting principles (''SAP''), derivative features within insurance products are not accounted for separately from the host contract. Under generally accepted accounting principles in the United States (''GAAP''), derivative features that are combined with traditional insurance products may be accounted for separately and included in a company's derivative liabilities, depending on whether the contract as a whole is carried at fair value and other criteria. The Council is cognizant of these differences between reporting under GAAP and SAP. Embedded derivatives will be included in the calculation of the Stage 1 derivative liabilities threshold, in accordance with GAAP, when such information is available. The Council will, as appropriate, assess embedded derivatives in Stages 2 and 3 with respect to particular nonbank financial companies. The relative importance of embedded derivatives tied to insurance products will depend on their type and how they may contribute to the risk posed by a nonbank financial company, regardless of how they are reported.

A number of commenters questioned how the Council will calculate the Stage 1 thresholds for asset managers and investment advisers. The Council has included in the interpretive guidance a clarification that while the Council expects that its determinations will apply to individual legal entities, the Council has authority to assess nonbank financial companies in a manner that addresses the statutory considerations and such other factors as the Council deems appropriate. For example, in applying the Stage 1 thresholds to funds (whether or not they are registered investment companies), the interpretive guidance states that the Council may consider the aggregate risks posed by separate funds that are managed by the

[13] *See* 17 CFR 49.17.

same adviser, particularly if the funds' investments are identical or highly similar. When applying the Stage 1 thresholds to an asset manager, the Council's analysis will appropriately reflect the distinct nature of assets under management compared to the asset manager's own assets. As discussed above, the Council may in the future issue additional guidance regarding additional metrics and thresholds, potentially including factors related to assets under management, regarding asset managers.

With respect to the application of the Stage 1 thresholds to foreign nonbank financial companies, several commenters requested that the thresholds be calculated based solely on the companies' U.S. operations. To respond to this request, the interpretive guidance specifies that for purposes of evaluating any U.S. nonbank financial company, the Council intends to apply each of the Stage 1 thresholds based on the global assets, liabilities and operations of the company and its subsidiaries. In contrast, for foreign nonbank financial companies, the Council intends to calculate the Stage 1 thresholds based solely on the U.S. assets, liabilities and operations of the foreign nonbank financial company and its subsidiaries.

Several commenters also suggested that a nonbank financial company's subsidiaries should not be included in the Council's evaluation of the company, including for purposes of calculating the Stage 1 thresholds. Similarly, these commenters requested that the Stage 1 thresholds, as applied to foreign nonbank financial companies, should exclude the operations of any U.S. subsidiary that meets the definition of ''U.S. nonbank financial company.'' The Dodd-Frank Act requires the Council to consider subsidiaries of nonbank financial companies in its analysis, and thus, the references to subsidiaries in the rule and interpretive guidance include subsidiaries. This conclusion is based in part on the statutory definition of ''nonbank financial company,'' which is based on a calculation of the revenues or assets of the relevant company ''and all of its subsidiaries.'' [14] Further, in light of the purposes of section 113 of the Dodd-Frank Act and the broad statutory considerations set forth in that provision, and the types of prudential standards to which nonbank financial companies subject to Council determinations are subject, a meaningful analysis must include not only a nonbank financial company's own operations, but also those of its subsidiaries. To determine whether a subsidiary of a nonbank financial company should be included for purposes of calculating the Stage 1 thresholds, the interpretive guidance, as described below, specifies that the Council intends generally to apply the Stage 1 thresholds using applicable accounting standards or such other data as are available to the Council.

Numerous commenters suggested that the levels of the Stage 1 thresholds should be adjusted periodically over time, based on indexes such as inflation or economic growth. The Council believes that automatic adjustments to the threshold levels based on one or more particular indexes such as inflation could result in threshold levels that do not indicate the potential for a nonbank financial company to pose a threat to financial stability. Therefore, the interpretive guidance states that the Council intends to review the levels of the Stage 1 thresholds that are specified in dollars at least every five years and to adjust those thresholds as the Council may deem advisable.

A number of commenters requested a clarification of the calculation date for the Stage 1 thresholds, with several proposing that the calculations be based on multi-period averages to reduce volatility and mitigate the effects of any unusual or one-time items. The Council recognizes that certain events that may cause a nonbank financial company briefly to exceed one or more Stage 1 thresholds may not indicate an increased threat to U.S. financial stability. However, because such an analysis is by its nature fact-specific, the Council believes that the appropriate framework for consideration of such factors is in Stage 2. Therefore, the interpretive guidance provides that the Council intends to reapply the Stage 1 thresholds using the most recently available data on a quarterly basis, or less frequently for nonbank financial companies with respect to which quarterly data are unavailable.

Several commenters also requested a clarification of the financial reporting standards that the Council will apply in Stage 1. In response to this request, the Council has revised the interpretive guidance to provide that the Council intends generally to apply the Stage 1 thresholds using GAAP when such information is available, or otherwise to rely on SAP, international financial reporting standards, or such other data as are available to the Council. While commenters suggested that the Council should rely on SAP when analyzing insurance companies, the Council has determined generally to rely on GAAP when such data are available in order to promote consistency and uniformity in the application of the Stage 1 thresholds. The Council expects to review financial statements prepared in accordance with SAP in Stages 2 and 3, if applicable.

4. Analysis and Procedures in Stages 2 and 3

After a subset of nonbank financial companies has been identified in Stage 1, the Council intends in Stage 2 to conduct a robust analysis of the potential threat that each of those nonbank financial companies could pose to U.S. financial stability primarily based on information available to the Council through existing public and regulatory sources, including information possessed by the company's primary financial regulatory agency or home country supervisor, as appropriate. The evaluation of the risk profile and characteristics of each nonbank financial company in Stage 2 will be based on a wide range of quantitative and qualitative industry- and company-specific factors. This analysis will use the six-category analytic framework described above under ''Analytic Framework for Determinations.'' To the extent data are available, the Council also intends in Stage 2 to consider the impact that resolving the nonbank financial company could have on U.S. financial stability.

Following Stage 2, nonbank financial companies that are selected for additional review in Stage 3 will receive notice that they are being considered for a proposed determination. Several commenters suggested that this notice should include an explanation of the basis of the Council's consideration, so that the nonbank financial company may present the Council with pertinent information. The Council believes that it would be premature to explain the basis of the nonbank financial company's identification for further consideration because the decision to review a nonbank financial company in Stage 3 does not represent a formal determination. The Council will provide the company with a written explanation of the basis of any proposed determination that it makes regarding the nonbank financial company after the Stage 3 review.

As discussed in greater detail in the interpretive guidance, during the Stage 3 review, the Council intends to analyze the nonbank financial company's potential to pose a threat to financial stability based on information obtained directly from the nonbank financial company and the information

[14] *See* 12 U.S.C. 5311(a)(6).

previously obtained by the Council during prior stages of review. In Stage 3, the Council likely will consider qualitative factors, including considerations that could mitigate or aggravate the potential of the nonbank financial company to pose a threat to U.S. financial stability, such as the nonbank financial company's resolvability, the opacity of its operations, its complexity, and the extent and nature of its existing regulatory scrutiny.

Several commenters requested an additional description of how the Council will perform its analysis in Stages 2 and 3, including a timetable for evaluations in Stages 2 and 3 and the relative weighting of particular metrics in the analysis. Commenters also suggested a variety of additional types of analysis the Council could perform in Stages 2 and 3, including trend analysis, risk-weighting of criteria, and analysis of economic cyclicality. Due to the diverse types of nonbank financial companies that may be evaluated in Stages 2 and 3 and the unique threats that these nonbank financial companies may pose to U.S. financial stability, the analysis and timing of review will depend on the particular circumstances of each nonbank financial company under consideration and the unique nature of the threat it may pose to U.S. financial stability.

While the interpretive guidance describes many metrics and factors that the Council may consider in evaluating nonbank financial companies, one commenter suggested that the Council should publicly disclose the use of any factors that are not specified in the interpretive guidance. The Council will include in any written notice of a proposed or final determination the basis of the proposed or final determination, whether or not the relevant metrics and factors are specified in the interpretive guidance. In accordance with section 112(a)(2)(N)(iv) of the Dodd-Frank Act, the basis for the Council's final determinations will be specified in the Council's annual report to Congress.

Commenters also cited a nonbank financial company's internal risk management program as a factor that the Council either should or should not consider in its evaluations. The interpretive guidance notes, as proposed, that the Council may analyze a nonbank financial company's risk-management procedures as one of many factors in Stage 3.

Several commenters also requested a clarification of the Council's assessment of resolvability. The interpretive guidance has been revised to clarify that the evaluation of a nonbank financial company's resolvability may mitigate or aggravate the potential of a nonbank financial company to pose a threat to U.S. financial stability.

In response to a commenter's request for a clarification of one of the sample metrics specified in the Proposed Guidance, the interpretive guidance clarifies that the Council may consider total consolidated assets or liabilities as determined under GAAP or the nonbank financial company's applicable financial reporting standards, depending on the availability of data and the stage of the Determination Process.

Several commenters also requested that nonbank financial companies that are evaluated in Stage 2 receive notices at the beginning of Stage 2, or be permitted to participate in Stage 2 by submitting information to the Council. Pursuant to the rule, the Council will provide every nonbank financial company that will be reviewed in Stage 3 a notice of consideration and an opportunity to submit written materials to contest the Council's consideration of the nonbank financial company for a proposed determination. Stage 2 is intended to comprise the Council's initial company-specific analysis, based primarily on existing public and regulatory sources, and the Council believes that Stage 3 provides a sufficient opportunity for nonbank financial companies to participate in the Determination Process. In addition, commenters requested that a nonbank financial company be notified if it is evaluated in Stage 2 and will not be considered in Stage 3. Due to the preliminary nature of the Council's evaluation of a nonbank financial company in Stage 2, the Council does not currently intend to provide for such notices in Stage 2. The Council may, at its discretion, adjust its process for providing notifications to nonbank financial companies as it gains experience with the Determination Process.

Based on the analysis performed in Stages 2 and 3, the Council may consider whether to vote to subject a nonbank financial company to a proposed determination. Prior to making a proposed determination, the Council may (i) consult with the nonbank financial company's primary financial regulatory agency or home country supervisor, as appropriate, and (ii) consider the views of such entities.[15] Commenters urged the Council to consult closely with the primary state regulator for any U.S. nonbank financial company or the primary home country supervisor for any foreign nonbank financial company under consideration for a determination. Such consultation and coordination will be an important part of the Determination Process, and the Council believes this process is sufficiently incorporated into paragraphs (b), (c), and (d) of § 1310.20 of the rule.

As noted in the interpretive guidance, the Council expects to notify a nonbank financial company that has been evaluated in Stage 3 if the company, either before or after a proposed determination, ceases to be considered for determination.

5. Process and Procedures Following a Proposed Determination

Following a proposed determination, the Council will issue a written notice of the proposed determination to the nonbank financial company that will provide an explanation of the basis of the proposed determination. The nonbank financial company may request a hearing to contest the proposed determination in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the rule.

In response to the public comments requesting more transparency regarding the Determination Process, the rule and interpretive guidance reflect certain clarifying changes.

Several commenters made suggestions as to whether the Council should publish the names of nonbank financial companies under consideration for a determination. Due to the preliminary nature of the Council's evaluation of a nonbank financial company prior to a final determination, and the potential for market participants to misinterpret such an announcement, the Council does not intend to publicly announce or otherwise disclose the name of any nonbank financial company that is under evaluation for a determination prior to a final determination with respect to such company. A statement that this is the Council's intention has been included in the interpretive guidance. In addition, in response to comments, the interpretive guidance specifies that, when practicable and consistent with the purposes of the Determination Process, the Council intends to provide a nonbank financial company with a notice of a final determination at least one business day before publicly announcing the final

[15] However, the concurrence of the primary financial regulatory agency is not required prior to the Council's proposed or final determination with respect to a nonbank financial company. The Council's consultation with a nonbank financial company's primary financial regulatory agency does not create any rights on the part of the nonbank financial company under consideration.

determination. This minimum time period is intended to allow nonbank financial companies to prepare any public communications and disclosures, but is relatively brief in order to avoid any potential market impact after the nonbank financial company is informed of the determination and before the determination is publicly announced.

One commenter recommended that the Council specify, in every notice of proposed and final determination, the regulatory approach the Council recommends to the Board of Governors with respect to the nonbank financial company. Under the Dodd-Frank Act, while the Council is authorized to make determinations regarding nonbank financial companies, the establishment of prudential standards applicable to such companies is within the purview of the Board of Governors, subject to any recommendations by the Council under section 115 of the Dodd-Frank Act. Therefore, in accordance with its statutory authority, the Council does not generally intend to make company-specific regulatory recommendations to the Board of Governors in connection with determinations.

One commenter requested that the Council clarify the registration procedures for companies that are subject to a final determination. Under section 114 of the Dodd-Frank Act, the Board of Governors is authorized to prescribe the forms for registration, including such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate. It is therefore appropriate for the registration procedures to be established by the Board of Governors, rather than by the Council.

D. Status of the Interpretive Guidance and Other Legal Issues

Several commenters questioned the Council's authority to issue the proposed rule and interpretive guidance, while other commenters requested that the Council clarify the legal status of the interpretive guidance. Section 111(e)(2) of the Dodd-Frank Act explicitly authorizes the Council to issue rules necessary for the conduct of the business of the Council, and specifies that such rules will constitute rules of agency organization, procedure, or practice. In accordance with this authority, the rule sets forth the procedures and practices that the Council will follow in the Determination Process and the manner in which nonbank financial companies may present themselves and their views to the Council.

Moreover, as the agency charged by Congress with responsibility for acting under section 113 of the Dodd-Frank Act, the Council has the inherent authority to promulgate interpretive rules and interpretive guidance that explain and interpret the statutory factors that the Council will consider in the Determination Process.[16] The interpretive guidance simply describes the Council's interpretation of the statutory factors and provides transparency to the public as to how the Council intends to exercise its statutory grant of discretionary authority. The interpretive guidance does not impose duties on, or alter the rights or interests of, any company, nor does it relieve the Council of making specific determinations in accordance with the Dodd-Frank Act. Rather, the Council must review and determine whether to subject any particular nonbank financial company to Board of Governors supervision on a company-specific basis after review of all of the relevant factors. Moreover, by providing for transparency in the Determination Process, the rule and interpretive guidance promote an accountability that benefits the public and the nonbank financial companies subject to evaluation. Thus, notwithstanding arguments to the contrary by a small number of commenters, the Council has the necessary authority to issue the rule and interpretive guidance.

Some commenters requested either that the interpretive guidance be incorporated into the rule text, or that the Council commit to providing the public with notice and an opportunity to comment on any proposed changes to the interpretive guidance. These commenters sought to ensure that the Council's actions would be made consistently and fairly and that the public would have notice of any changes to the interpretive guidance. If the Council revises the interpretive guidance in the future, the Council may provide the public with notice and an opportunity to comment on those changes, as the Council determines appropriate.

One commenter argued that Title I of the Dodd-Frank Act violates the U.S. Constitution based on (i) the limited judicial review of Council determinations under section 113(h) of the Dodd-Frank Act and (ii) the scope of the delegation of Congressional authority embodied by the regulation of nonbank financial companies under Title I of the statute. The Council disagrees with this assessment and does not believe that this rulemaking is the appropriate context to address these issues.

One commenter asserted that the Council had not satisfied the requirements of the Congressional Review Act (5 U.S.C. 801) in connection with this rulemaking. That statute provides that before a rule can take effect, the federal agency promulgating it must submit certain information to Congress and to the Comptroller General. No action was required to be taken by the Council in connection with the issuance of the NPR and Proposed Guidance, and the Council will comply fully with the statutory requirements in connection with the issuance of the rule and interpretive guidance.

IV. Section-by-Section Analysis

A. Subpart A—General

1. § 1310.1 Authority and Purpose

This section sets forth the authority for and purpose of the rule.

2. § 1310.2 Definitions

This section defines the terms relevant to the rule. One commenter requested a clarification of the definition of ''member agencies.'' That term is defined, unchanged from the NPR, as an agency represented by a voting member of the Council under section 111(b)(1) of the Dodd-Frank Act.

B. Subpart B—Determinations

1. § 1310.10 Council Determinations Regarding Nonbank Financial Companies

This section sets forth the Council's authority to make proposed and final determinations with respect to nonbank financial companies, pursuant to sections 113(a) and (b) of the Dodd-Frank Act. It sets forth the two standards for determinations, the requirements for a Council vote with respect to proposed and final determinations, and the Council's ability pursuant to section 112(d)(4) of the Dodd-Frank Act to request that the Board of Governors conduct an examination to determine whether a U.S. nonbank financial company should be supervised by the Board of Governors for purposes of Title I of the Dodd-Frank Act.

Two commenters suggested that the Council clarify the circumstances under

[16] Courts have recognized that ''an agency charged with a duty to enforce or administer a statute has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion.'' *See,* for example, *Production Tool* v. *Employment & Training Administration,* 688 F.2d 1161, 1166 (7th Cir. 1982). The Supreme Court has acknowledged that ''whether or not they enjoy any express delegation of authority on a particular question, agencies charged with applying a statute necessarily make all sorts of interpretive choices.'' *See U.S.* v. *Mead,* 533 U.S. 218, 227 (2001).

which the Council will enlist the Board of Governors as an examiner under § 1310.10(c)(1) of the rule. In order to maintain consistency with section 112(d)(4) of the Dodd-Frank Act, the Council is adopting this section of the rule as proposed.

2. § 1310.11 Considerations in Making Proposed and Final Determinations

This section sets forth the considerations that the Council must consider in making a proposed or final determination with respect to a U.S. nonbank financial company or foreign nonbank financial company. These considerations reflect the statutory factors set forth in sections 113(a)(2) and (b)(2) of the Dodd-Frank Act.

3. § 1310.12 Anti-Evasion Provision

This section sets forth the Council's authority to require that the financial activities of a company that is not a nonbank financial company be supervised by the Board of Governors and be subject to prudential standards if the Council determines that material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company would pose a threat to the financial stability of the United States, and the company is organized or operates in such a manner as to evade the application of Title I of the Dodd-Frank Act. This section defines ''financial activities'' as that term is defined in section 113(c)(5) of the Dodd-Frank Act.

Paragraph (d) is intended to clarify the application of subpart C. This section provides that, in accordance with section 113(c)(4) of the Dodd-Frank Act, the provisions of subpart C governing information collection (including the confidentiality provisions), consultation, notice and opportunity for an evidentiary hearing, emergency waivers or modifications, and reevaluation and rescission of determinations will apply in the context of the Council's anti-evasion authority. The information-collection authority of the Council with respect to companies in this context derives from the authority of the Council to receive information from the OFR, member agencies, and the Federal Insurance Office, and from the authority of the OFR, on behalf of the Council, to require the submission of periodic and other reports from any financial company, under sections 112(a)(2)(A), 112(d)(1), (2), and (3), and 154(b) of the Dodd-Frank Act.

Companies that are engaged in financial activities, but that are organized or operated in such a manner as to evade the application of Title I of the Dodd-Frank Act, may be subject to a determination by the Council under the anti-evasion authority in section 113(c) of the Dodd-Frank Act. In exercising its anti-evasion authority with respect to a U.S. nonbank financial company or foreign nonbank financial company, the Council must consider the relevant statutory factors applicable to a U.S. or foreign nonbank financial company, respectively. The Council may make such a determination either on its own initiative or at the request of the Board of Governors. Commenters requested that the rule further define the scope of the Council's anti-evasion authority. In addition, one commenter recommended that the rules should permit the supervision of internal financial activities of a nonbank financial company that has been the subject of a Council determination under its anti-evasion authority. Because § 1310.12 of the rule reflects the statutory authorities under section 113(c), and the Council believes such consistency is appropriate, the Council has not revised this section as suggested by commenters.

C. Subpart C—Information Collection; Proposed and Final Determinations; Evidentiary Hearings

1. § 1310.20 Council Information Collection; Consultation; Coordination; Confidentiality

This section sets forth the Council's authority to collect information with respect to nonbank financial companies and its responsibilities in consulting and coordinating with regulators and maintaining the confidentiality of submitted information. Paragraph (a) sets forth the Council's ability to collect information from the OFR, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies. Pursuant to its statutory authority, the Council may also receive and request the submission of data or information from its voting and non-voting members. Paragraph (b) sets forth the Council's ability to collect information from nonbank financial companies. These two paragraphs implement the provisions of section 112 of the Dodd-Frank Act relating to the Council's authority to obtain information and collect financial data. Paragraph (c), which has been revised for consistency with section 113(g) of the Dodd-Frank Act, provides that the Council will consult with a nonbank financial company's primary financial regulatory agency in a timely manner. Paragraph (d) provides that the Council will consult with appropriate foreign regulatory authorities, to the extent appropriate, in accordance with section 113(i) of the Dodd-Frank Act. Paragraph (e) implements the confidentiality requirements provided in section 112(d)(5) of the Dodd-Frank Act.

Several commenters requested that information submitted by nonbank financial companies be treated as exempt from disclosure under the FOIA. Commenters also requested that further confidentiality provisions be added to the rule, such as incorporating the Council's separate FOIA rule into the rule, committing to limiting the collection of sensitive information, and protections for information that has been collected. The Council is sensitive to these concerns. Under § 1310.20(e)(3) of the rule, the FOIA and the applicable exemptions thereunder apply to any data or information submitted under the rule. In addition, the Council's FOIA rule will apply to data and information received by the Council. The Council expects that nonbank financial companies' submissions will likely contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and information that is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' These types of information are subject to withholding under exemptions 4 and 8 of the FOIA (5 U.S.C. 552(b)(4) and (8)). To the extent that nonbank financial companies' submissions contain or consist of data or information not subject to an applicable FOIA exemption, that data or information would be releasable under the FOIA.

In response to commenters' concerns regarding confidentiality, the Council has modified § 1310.20 of the rule to clarify that the protections under that section apply to data, information, and reports (i) collected from federal and state financial regulatory agencies other than the OFR, member agencies, and the Federal Insurance Office and (ii) voluntarily submitted by any nonbank financial company that is being considered for a determination. This change also addresses another commenter's assertion that the Council lacks statutory authority to collect information from federal or state financial regulatory agencies other than the OFR, member agencies and the Federal Insurance Office,[17] because the

[17] One of the statutory Council's duties, under section 112(a)(2)(A), is to ''collect information from member agencies, other Federal and State financial

Council expects that the OFR will participate as necessary in the information-collection and review process pursuant to its authority under sections 112(d) and 154(b) of the Dodd-Frank Act. Further, it should be noted that all members of the Council, including both its voting and non-voting members, will treat records of the Council in accordance with the Council's FOIA rule. When the Council and its members provide non-public information to each other in connection with Council functions and activities, the recipients generally intend to treat such information as confidential and not publicly to disclose such information without the consent of the providing party. However, such information may be used by the recipients for enforcement, examination, resolution planning, or other purposes, subject to any appropriate limitations on the disclosure of such information to third parties, taking into account factors including the need to preserve the integrity of the supervision and examination process. The Council believes that the additional confidentiality restrictions suggested by commenters generally would not materially increase the confidentially of information collected by the Council, due to requirements under the FOIA, or would harmfully constrain the Council's ability to perform its evaluations of nonbank financial companies.

Commenters also recommended that the Council rely to the extent possible on existing regulatory sources and on information in the form it is reported to regulators, to minimize the burden of information requests. The Council generally agrees with these comments, and in accordance with the Council's statutory obligation under section 112(d)(3)(B) of the Dodd-Frank Act intends, whenever possible, to rely on information available from the OFR or any member agency or primary financial regulatory agency that regulates a nonbank financial company before requiring the submission of reports from such nonbank financial company. The Council expects that the collection of information under this section of the rule will be performed in a manner that attempts to minimize burdens for affected nonbank financial companies.

2. § 1310.21 Proposed and Final Determinations; Notice and Opportunity for an Evidentiary Hearing

This section sets forth the procedural rights of a nonbank financial company being considered for a proposed or final determination, the time period within which the Council will act after it notifies the nonbank financial company that it is being considered for a proposed determination, and the nonbank financial company's rights to a hearing after a proposed determination. Paragraph (a) provides that the Council will deliver written notice to a nonbank financial company that it is being considered for a proposed determination and will provide the nonbank financial company an opportunity to submit written materials to contest the proposed determination. Paragraph (a) clarifies that the nonbank financial company may submit any written materials to contest the proposed determination, including materials concerning whether the nonbank financial company meets the standards for a determination. In response to comments, paragraph (a) provides that the Council will provide a nonbank financial company at least 30 days to respond to the notice of consideration. Commenters had requested a longer minimum period for responses, but based on the types and volume of information the Council expects to request, the subsequent opportunity for a nonbank to provide additional information following any proposed determination, and the Council's authority in individual cases to grant a longer period for a response, the Council believes a 30-day minimum is appropriate.

Paragraph (b) provides that the Council will provide a nonbank financial company with written notice of a proposed determination, including an explanation of the basis of the proposed determination. Paragraphs (c), (d), and (e) set forth the procedures for an evidentiary hearing following a proposed determination, pursuant to section 113(e) of the Dodd-Frank Act, and provide the time period within which the Council will make a final determination. These paragraphs also provide that the Council will make public any final determination that it makes. While not specified in the rule, the Council expects to notify the relevant nonbank financial company if the Council has not made a final determination with respect to the company within the time period set forth in paragraph (d) or (e), as applicable. In response to comments, the Council has clarified paragraph (c) to provide that the hearing would be nonpublic. However, the Council has not revised the rule as requested by several commenters to provide a nonbank financial company with a right to an oral hearing. Instead, the rule maintains consistency with section 113(e)(2) of the Dodd-Frank Act, which grants the Council sole discretion as to the format of any hearing. Paragraph (c)(1) has also been revised to clarify that, consistent with the definition of ''hearing date,'' a hearing may be before the Council or its representatives.

Paragraph (f) sets forth the time period within which the Council may make a proposed determination with respect to a nonbank financial company that has received a notice of consideration of determination. Under paragraph (a)(3), the Council will notify a nonbank financial company that is being considered for a proposed determination of the date on which the Council deems its evidentiary record regarding that nonbank financial company to be complete. If the Council does not make a proposed determination with respect to that nonbank financial company within 180 days after that date, the Council will not make a proposed determination unless the Council issues a subsequent written notice of consideration of determination under paragraph (a) and thereafter complies with the other procedures set forth in that section. This paragraph is intended to provide clarity to a nonbank financial company that is subject to a notice of consideration of determination regarding the timing of any potential subsequent Council action. The Council expects to notify the relevant nonbank financial company upon expiration of this 180-day period.

3. § 1310.22 Emergency Exception to § 1310.21

This section sets forth the process by which the Council may waive or modify any of the notice or other procedural requirements of the rule if the Council determines that the waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States, pursuant to section 113(f) of the Dodd-Frank Act. This section provides that a nonbank financial company will receive notice of the waiver or modification and an opportunity for a hearing to contest the waiver or modification, and sets forth the process by which the Council will make and publicly announce its final determination. This section incorporates the statutory requirement that the Council consult with the appropriate home country supervisor, if any, of a foreign nonbank financial company considered for a determination under this section. This section also requires the Council to consult with the primary financial regulatory agency, if any, of a nonbank financial company in

regulatory agencies [and] the Federal Insurance Office.''

making a determination under this section. These consultations will be conducted in such time and manner as the Council may deem appropriate. Several commenters requested that the Council clarify or limit the scope of this section of the rule. To maintain consistency with the Council's statutory authority under section 113(f) of the Dodd-Frank Act, and to avoid imposing unwarranted restrictions on the Council's ability to respond to emergency situations, the Council is adopting this section as proposed. In response to comments, the Council has clarified paragraph (c) to provide that the hearing under this section would be nonpublic, and the Council has revised paragraph (d) to clarify that while the Council will publicly announce final determinations under § 1310.10(a), the Council will not publicly announce determinations regarding waivers or modifications under § 1310.22(c). Paragraph (c)(1) has also been revised to clarify that, consistent with the definition of ''hearing date,'' a hearing may be before the Council or its representatives.

4. § 1310.23 Council Reevaluation and Rescission of Determinations

This section sets forth the Council's statutory responsibility, pursuant to section 113(d) of the Dodd-Frank Act, to reevaluate currently effective determinations and rescind any determination if the Council determines that the nonbank financial company no longer meets the standards for determination.

In response to comments requesting clarification of the process for reevaluations, paragraph (b) provides new procedural protections for nonbank financial companies. Pursuant to paragraph (b), the Council will notify each nonbank financial company subject to a currently effective determination prior to the Council's annual reevaluation. The nonbank financial company will be provided an opportunity to submit written materials to the Council to contest the determination. Because increased information about any nonbank financial company subject to a previous determination will be available to the Council through the Board of Governors, and the Council will have previously performed a comprehensive analysis of any such company, a replication in full of the Council's evaluation in Stages 2 and 3 will not be necessary. Instead, the Council expects that its reevaluations will focus on any material changes with respect to the nonbank financial company or the markets in which it operates since the Council's previous review. Commenters also suggested that nonbank financial companies be permitted to request additional reevaluations. Due to the relatively frequent mandatory reevaluations, such additional reevaluations should rarely be necessary. In the event of an extraordinary change that materially decreases the threat a nonbank financial company poses to U.S. financial stability relatively soon after a previous reevaluation, the Council may, at its sole discretion, consider a request from such company for a reevaluation prior to the next annual reevaluation. New paragraph (d) provides that upon a rescission of a determination with respect to a nonbank financial company, the Council will notify the company and publicly announce the rescission.

V. Regulatory Flexibility Act

The Council certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The economic impact of this rule is not expected to be significant. The final rule would apply only to nonbank financial companies that could pose a threat to the financial stability of the United States. Size is an important factor, although not the exclusive factor, in assessing whether a nonbank financial company could pose a threat to financial stability. The Council expects that few, if any, small companies (as defined for purposes of the Small Business Act) could pose a threat to financial stability. Therefore, the Council does not expect the rule to directly affect a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601–612) is not required.

VI. Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control 1505–0244. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information in this final rule is found in § 1310.20, § 1310.21, § 1310.22, and § 1310.23.

The hours and costs associated with preparing data, information, and reports for submission to the Council constitute reporting and cost burdens imposed by the collection of information. The estimated total annual reporting burden associated with the collection of information in this final rule is 1,000 hours. We estimate the cost associated with this information collection to be $450,000. In making this estimate, the Council estimates that due to the nature of the information likely to be requested, approximately 75 percent of the burden in hours will be carried by nonbank financial companies internally at an average cost of $400 per hour, and the remainder will be carried by outside professionals retained by nonbank financial companies at an average cost of $600 per hour. In addition, in determining these estimates, the Council considered its obligation under § 1310.20(b) of the rule to, whenever possible, rely on information available from the OFR or any member agency or primary financial regulatory agency that regulates a nonbank financial company before requiring the submission of reports from such nonbank financial company. The Council expects that its collection of information under the rule will be performed in a manner that attempts to minimize burdens for affected nonbank financial companies. The aggregate burden will be subject to the number of nonbank financial companies that are evaluated in Stage 3, the extent of information regarding such companies that is available to the Council through existing public and regulatory sources, and the amount and types of information that nonbank financial companies provide to the Council during the Determination Process.

Several commenters asserted that the Paperwork Reduction Act disclosure in the NPR did not comply with the statute, citing a requirement to provide the public with notice and an opportunity to comment on the proposed collection of information, including an estimate of the burden that will result from the collection of information. The NPR cited the sections of the proposed rule that related to the collection of information, described the types of information expected to be collected and the frequency of collections, provided an estimate of the total annual reporting burden, and enabled the public to assess the likely respondents. The NPR therefore complied with the requirements of the Paperwork Reduction Act.

VII. Executive Orders 12866 and 13563

Presidential Executive Order 12866, ''Regulatory Planning and Review,'' [18] and Executive Order 13563, ''Improving

[18] Available at *http://www.gpo.gov/fdsys/pkg/WCPD-1993-10-04/pdf/WCPD-1993-10-04-Pg1925.pdf.*

Regulation and Regulatory Review,'' [19] direct certain agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Several commenters suggested that the Council should, or is required to, conduct a cost-benefit analysis, such as a review of the impact of the rule on the economy and on different sectors of the financial services industry. These commenters argued that a cost-benefit analysis would enhance transparency and ensure that costs are minimized, and may be required under Executive Orders 12866 and 13563. In addition, commenters questioned the determination that this rule is not economically significant under section 3(f) of Executive Order 12866. That section defines ''significant regulatory action'' to include a regulatory action (which may include a proposed rule of agency procedure or practice) that is likely to result in a rule that may raise certain novel legal or policy issues. Based on this determination, which is made by the Office of Management and Budget, the Council is not required to conduct a cost-benefit analysis in connection with this rulemaking. The rule and the interpretive guidance are limited to descriptions of the processes and procedures that the Council intends to follow in making determinations under section 113 of the Dodd-Frank Act, the manner in which nonbank financial companies may present themselves and their views to the Council, the Council's interpretation of the statutory factors, and how the Council intends to exercise its statutory grant of discretionary authority. The rights and obligations of nonbank financial companies that the Council is considering for a determination, or for a reevaluation and potential rescission of a determination, arise directly from section 113 of the Dodd-Frank Act. The rights and obligations of nonbank financial companies that the Council has been determined shall be supervised by the Board of Governors arise from other sections of the Dodd-Frank Act and the rules promulgated thereunder, such as the enhanced prudential standards to be established by the Board of Governors and the resolution plans required under section 165 of the Dodd-Frank Act. Based on data currently available to the Council through existing public and regulatory sources, the Council has estimated that fewer than 50 nonbank financial companies meet the Stage 1 thresholds.

[19] Available at *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

List of Subjects in 21 CFR Part 1310

Nonbank financial companies.

Financial Stability Oversight Council

Authority and Issuance

For the reasons set forth in the preamble, the Financial Stability Oversight Council adds a new part 1310 to Title 12 of the Code of Federal Regulations, to read as follows:

PART 1310—AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES

Sec.

Authority: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

Subpart A—General

§ 1310.1 Authority and purpose.

(a) *Authority.* This part is issued by the Council under sections 111, 112 and 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') (12 U.S.C. 5321, 5322, and 5323).

(b) *Purpose.* The principal purposes of this part are to set forth the standards and procedures governing Council determinations under section 113 of the Dodd-Frank Act (12 U.S.C. 5323), including whether material financial distress at a nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States, and whether a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with Title I of the Dodd-Frank Act.

§ 1310.2 Definitions.

The terms used in this part have the following meanings—

Board of Governors. The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

Commission. The term ''Commission'' means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

Council. The term ''Council'' means the Financial Stability Oversight Council.

Federal Insurance Office. The term ''Federal Insurance Office'' means the office established within the Department of the Treasury by section 502(a) of the Dodd-Frank Act (31 U.S.C. 301 (note)).

Foreign nonbank financial company. The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) ''Predominantly engaged in financial activities,'' as that term is defined in section 102(a)(6) of the Dodd-Frank Act (12 U.S.C. 5311(a)(6)) and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)), including through a branch in the United States.

Hearing date. The term ''hearing date'' means the latest of—

(1) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company for a hearing that is conducted without oral testimony pursuant to § 1310.21 or § 1310.22, as applicable;

(2) The final date on which the Council or its representatives convene to hear oral testimony presented by a nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable; and

(3) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company to supplement any oral testimony and materials presented by the nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable.

Member agency. The term ''member agency'' means an agency represented by a voting member of the Council under section 111(b)(1) of the Dodd-Frank Act (12 U.S.C. 5321).

Nonbank financial company. The term ''nonbank financial company'' means a U.S. nonbank financial company or a foreign nonbank financial company.

Office of Financial Research. The term ''Office of Financial Research'' means the office established within the Department of the Treasury by section 152 of the Dodd-Frank Act (12 U.S.C. 5342).

Primary financial regulatory agency. The term ''primary financial regulatory agency'' means—

(1) The appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), except to the extent that an institution is or the activities of an institution are otherwise described in paragraph (2), (3), (4), or (5) of this definition;

(2) The Commission, with respect to—

(i) Any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) Any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) Any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) Any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) Any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) Any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) Any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) Any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) Any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) The Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) The Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*);

(xii) The Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*); and

(xiii) Any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(3) The Commodity Futures Trading Commission, with respect to—

(i) Any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) Any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) Any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading advisor or introducing broker to be registered under that Act;

(iv) Any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) Any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(vi) Any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(vii) Any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) Any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) Any registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(4) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(5) The Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Prudential standards. The term ''prudential standards'' means enhanced supervision and regulatory standards established by the Board of Governors under section 165 of the Dodd-Frank Act (12 U.S.C. 5365).

Significant companies. The terms ''significant nonbank financial

company'' and ''significant bank holding company'' have the meanings ascribed to such terms by regulation of the Board of Governors issued under section 102(a)(7) of the Dodd-Frank Act (12 U.S.C. 5311(a)(7)).

U.S. nonbank financial company. The term ''U.S. nonbank financial company'' means a company (other than a bank holding company; a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission; a board of trade designated as a contract market by the Commodity Futures Trading Commission (or parent thereof); or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility, or swap data repository registered with the Commodity Futures Trading Commission), that is—

(1) Incorporated or organized under the laws of the United States or any State; and

(2) ''Predominantly engaged in financial activities,'' as that term is defined in section 102(a)(6) of the Dodd-Frank Act (12 U.S.C. 5311(a)(6)), and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)).

Subpart B—Determinations

§ 1310.10 Council determinations regarding nonbank financial companies.

(a) *Determinations.* The Council may determine that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with Title I of the Dodd-Frank Act, if the Council determines that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Back-up examination by the Board of Governors.* (1) If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company, including a U.S. nonbank financial company that is owned by a foreign nonbank financial company, pose a threat to the financial stability of the United States, based on information or reports obtained by the Council under § 1310.20, including discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company and its subsidiaries for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of Title I of the Dodd-Frank Act (12 U.S.C. 5311–5374).

(2) The Council shall review the results of the examination of a nonbank financial company, including its subsidiaries, conducted by the Board of Governors under this paragraph (c) in connection with any proposed or final determination under paragraph (a) of this section with respect to the nonbank financial company.

§ 1310.11 Considerations in making proposed and final determinations.

(a) *Considerations for U.S. nonbank financial companies.* In making a proposed or final determination under § 1310.10(a) with respect to a U.S. nonbank financial company, the Council shall consider—

(1) The extent of the leverage of the U.S. nonbank financial company and its subsidiaries;

(2) The extent and nature of the off-balance-sheet exposures of the U.S. nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the U.S. nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such U.S. nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the U.S. nonbank financial company and its subsidiaries, and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the U.S. nonbank financial company and its subsidiaries;

(8) The degree to which the U.S. nonbank financial company and its subsidiaries are already regulated by 1 or more primary financial regulatory agencies;

(9) The amount and nature of the financial assets of the U.S. nonbank financial company and its subsidiaries;

(10) The amount and types of the liabilities of the U.S. nonbank financial company and its subsidiaries, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

(b) *Considerations for foreign nonbank financial companies.* In making a proposed or final determination under § 1310.10(a) with respect to a foreign nonbank financial company, the Council shall consider—

(1) The extent of the leverage of the foreign nonbank financial company and its subsidiaries;

(2) The extent and nature of the United States related off-balance-sheet exposures of the foreign nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the foreign nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such foreign nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the foreign nonbank financial company and its subsidiaries and the extent to which

ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the foreign nonbank financial company and its subsidiaries;

(8) The extent to which the foreign nonbank financial company and its subsidiaries are subject to prudential standards on a consolidated basis in the foreign nonbank financial company's home country that are administered and enforced by a comparable foreign supervisory authority;

(9) The amount and nature of the United States financial assets of the foreign nonbank financial company and its subsidiaries;

(10) The amount and nature of the liabilities of the foreign nonbank financial company and its subsidiaries used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

§ 1310.12 Anti-evasion provision.

(a) *Determinations.* In order to avoid evasion of Title I of the Dodd-Frank Act (12 U.S.C. 5311–5374) or this part, the Council, on its own initiative or at the request of the Board of Governors, may require that the financial activities of a company shall be supervised by the Board of Governors and subject to prudential standards if the Council determines that—

(1) Material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in—

(i) § 1310.11(a) if the company is incorporated or organized under the laws of the United States or any State; or

(ii) § 1310.11(b) if the company is incorporated or organized in a country other than the United States; and

(2) The company is organized or operates in such a manner as to evade the application of Title I of the Dodd-Frank Act (12 U.S.C. 5311–5374) or this part.

(b) *Vote required.* Any proposed or final determination under paragraph (a) of this section shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c) *Definition of covered financial activities.* For purposes of this section, the term ''financial activities''—

(1) Means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(2) Includes the ownership or control of one or more insured depository institutions; and

(3) Does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

(d) *Application of other provisions.* Sections 1310.20(a), 1310.20(b), 1310.20(c), 1310.20(e), 1310.21, 1310.22, and 1310.23, and the definitions referred to therein, shall apply to proposed and final determinations of the Council with respect to the financial activities of a company pursuant to this section in the same manner as such sections apply to proposed and final determinations of the Council with respect to nonbank financial companies.

Subpart C—Information Collection; Proposed and Final Determinations; Evidentiary Hearings

§ 1310.20 Council information collection; consultation; coordination; confidentiality.

(a) *Information collection from the Office of Financial Research, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies.* The Council may receive, and may request the submission of, such data or information from the Office of Financial Research, member agencies, the Federal Insurance Office, and (acting through the Office of Financial Research, to the extent the Council determines necessary) other Federal and State financial regulatory agencies as the Council deems necessary to carry out the provisions of Title I of the Dodd-Frank Act (12 U.S.C. 5311–5374) or this part.

(b) *Information collection from nonbank financial companies.* (1) The Council may, to the extent the Council determines appropriate, direct the Office of Financial Research to require the submission of periodic and other reports from any nonbank financial company, including a nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(2) Before requiring the submission of reports under this paragraph (b) from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agency or agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agency or agencies.

(3) Before requiring the submission of reports under this paragraph (b) from a company that is a foreign nonbank financial company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such foreign nonbank financial company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) The Council may, to the extent the Council determines appropriate, accept the submission of any data, information, and reports voluntarily submitted by any nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(c) *Consultation.* The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under § 1310.10(a) in a timely manner before the Council makes any final determination under § 1310.10(a) with respect to such nonbank financial company.

(d) *International coordination.* In exercising its duties under this part with respect to foreign nonbank financial companies and cross-border activities and markets, the Council, acting through its Chairperson or other authorized designee, shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(e) *Confidentiality*—(1) *In general.* The Council shall maintain the confidentiality of any data, information, and reports submitted under this part.

(2) *Retention of privilege.* The submission of any non-publicly available data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including

the rules of any Federal or State court) to which the data or information is otherwise subject.

(3) *Freedom of Information Act.* Section 552 of Title 5, United States Code, including the exceptions thereunder, and any regulations thereunder adopted by the Council, shall apply to any data, information, and reports submitted under this part.

§ 1310.21 Proposed and final determinations; notice and opportunity for an evidentiary hearing.

(a) *Written notice of consideration of determination; submission of materials.* Before providing a nonbank financial company written notice of a proposed determination pursuant to paragraph (b) of this section, the Council shall provide the nonbank financial company—

(1) Written notice that the Council is considering whether to make a proposed determination with respect to the nonbank financial company under § 1310.10(a);

(2) An opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(1)), to the Council to contest the Council's consideration of the nonbank financial company for a proposed determination, including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States; and

(3) Notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete.

(b) *Notice of proposed determination.* If the Council determines under § 1310.10(a) that a nonbank financial company should be supervised by the Board of Governors and be subject to prudential standards, the Council shall provide to the nonbank financial company written notice of the proposed determination, including an explanation of the basis of the proposed determination and the date by which an evidentiary hearing may be requested by the nonbank financial company under paragraph (c) of this section.

(c) *Evidentiary hearing.* (1) Not later than 30 days after the date of receipt by a nonbank financial company of the notice of proposed determination under paragraph (b) of this section, the nonbank financial company may request, in writing, an opportunity for a nonpublic, written or oral evidentiary hearing before the Council or its representatives to contest the proposed determination under § 1310.10(a).

(2) Upon receipt by the Council of a timely request under paragraph (c)(1), the Council shall fix a time (not later than 30 days after the date of receipt by the Council of the request) and place at which such nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) to contest the proposed determination under § 1310.10(a), including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States.

(d) *Final determination after evidentiary hearing.* If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 60 days after the hearing date—

(1) Determine whether to make a final determination under § 1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under § 1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(e) *No evidentiary hearing requested.* If a nonbank financial company does not make a timely request for an evidentiary hearing under paragraph (c) of this section or notifies the Council in writing that it is not requesting an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 10 days after the date by which the nonbank financial company could have requested a hearing under paragraph (c) of this section or 10 days after the date on which the Council receives notice from the nonbank financial company that it is not requesting an evidentiary hearing, as applicable—

(1) Determine whether to make a final determination under § 1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under § 1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(f) *Time period for consideration.* (1) If the Council does not make a proposed determination under § 1310.10(a) with respect to a nonbank financial company within 180 days after the date on which the nonbank financial company receives the notice of completion of the Council's evidentiary record described in paragraph (a)(3) of this section, the nonbank financial company shall not be eligible for a proposed determination under § 1310.10(a) unless the Council issues a subsequent written notice of consideration of determination under paragraph (a) of this section to such nonbank financial company.

(2) This paragraph (f) shall not limit the Council's ability to issue a subsequent written notice of consideration of determination under § 1310.21(a) to any nonbank financial company that, within 180 days after the date on which such nonbank financial company received a notice described in paragraph (a)(3) of this section, does not become subject to a proposed determination under § 1310.10(a).

§ 1310.22 Emergency exception to § 1310.21.

(a) *Exception to § 1310.21.* Notwithstanding anything to the contrary in § 1310.21, the Council may waive or modify any or all of the notice and other procedural requirements of § 1310.21 with respect to a nonbank financial company if—

(1) The Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States; and

(2) The Council provides written notice of the waiver or modification under this section to the nonbank financial company as soon as practicable, but not later than 24 hours after the waiver or modification is granted. Any such notice shall set forth the manner and form for transmitting a request for an evidentiary hearing under paragraph (c) of this section.

(b) *Consultation.* (1) In making a determination under paragraph (a) of this section with respect to a nonbank financial company, the Council shall consult with the primary financial regulatory agency, if any, for such nonbank financial company, in such

time and manner as the Council may deem appropriate.

(2) In making a determination under paragraph (a) of this section with respect to a foreign nonbank financial company, the Council shall consult with the appropriate home country supervisor, if any, of such foreign nonbank financial company, in such time and manner as the Council may deem appropriate.

(c) *Opportunity for evidentiary hearing.* (1) If the Council, pursuant to paragraph (a) of this section, waives or modifies any of the notice or other procedural requirements of § 1310.21 with respect to a nonbank financial company, the nonbank financial company may request, in writing, an opportunity for a nonpublic, written or oral evidentiary hearing before the Council or its representatives to contest such waiver or modification, not later than 10 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(2) of this section.

(2) Upon receipt of a timely request for an evidentiary hearing under paragraph (c)(1), the Council shall fix a time (not later than 15 days after the date of receipt by the Council of the request) and place at which the nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) regarding the waiver or modification under this section.

(d) *Notice of final determination.* If the nonbank financial company makes a timely request for an evidentiary hearing under paragraph (c) of this section, the Council shall, not later than 30 days after the hearing date—

(1) Make a final determination regarding the waiver or modification under this § 1310.22;

(2) Notify the nonbank financial company, in writing, of the final determination of the Council regarding the waiver or modification under this § 1310.22, which notice shall contain a statement of the basis for the final decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(e) *Vote required.* Any determination of the Council under paragraph (a)(1) of this section to waive or modify any of the notice or other procedural requirements of § 1310.21 shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

§ 1310.23 Council reevaluation and rescission of determinations.

(a) *Reevaluation and rescission.* The Council shall, not less frequently than annually—

(1) Reevaluate each currently effective determination made under § 1310.10(a); and

(2) Rescind any such determination, if the Council determines that the nonbank financial company no longer meets the standard under § 1310.10(a), taking into account the considerations in § 1310.11(a) or § 1310.11(b), as applicable.

(b) *Notice of reevaluation; submission of materials.* The Council shall provide written notice to each nonbank financial company subject to a currently effective determination prior to the Council's reevaluation of such determination under paragraph (a) of this section and shall provide such nonbank financial company an opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of such notice), to the Council to contest the determination, including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States.

(c) *Vote required.* Any determination of the Council under paragraph (a)(2) of this section to rescind a determination made with respect to a nonbank financial company shall—

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(d) *Notice of rescission.* If the Council rescinds a determination with respect to any nonbank financial company under paragraph (a) of this section, the Council shall notify the nonbank financial company, in writing, of such rescission and publicly announce such rescission.

Appendix A to Part 1310—Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations

I. Introduction

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') [1] authorizes the Financial Stability Oversight Council (the ''Council'') to determine that a nonbank financial company will be supervised by the Board of Governors of the Federal Reserve System (the ''Board of Governors'') and be subject to prudential standards in accordance with Title I of the Dodd-Frank Act if either of two standards is met. Under the first standard, the Council may subject a nonbank financial company to supervision by the Board of Governors and prudential standards if the Council determines that ''material financial distress'' at the nonbank financial company could pose a threat to the financial stability of the United States. Under the second standard, the Council may determine that a nonbank financial company will be supervised by the Board of Governors and subject to prudential standards if the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to U.S. financial stability. Section 113 of the Dodd-Frank Act also lists 10 considerations that the Council must take into account in making a determination.[2]

Section II of this document describes the manner in which the Council intends to apply the statutory standards and considerations in making determinations under section 113 of the Dodd-Frank Act. First, section II defines ''threat to the financial stability of the United States'' and describes channels through which a nonbank financial company could pose such a threat. Second, it discusses each of the two statutory standards for determination. Third, it describes the six-category framework that the Council intends to use to evaluate nonbank financial companies under each of the 10 statutory considerations. Section II also includes lists of sample metrics that may be used to evaluate individual nonbank financial companies under each of the six categories.

Section III of this document outlines the process that the Council intends to follow in non-emergency situations when determining whether to subject a nonbank financial company to Board of Governors supervision and prudential standards. Section III also provides a detailed description of the analysis that the Council intends to conduct during each stage of its review. In the first stage of the process, the Council will apply six uniform quantitative thresholds to nonbank financial companies to identify those nonbank financial companies that will be subject to further evaluation by the Council. Because the Council is relying in the first stage on quantitative thresholds using

[1] *See* 12 U.S.C. 5323.

[2] In addition to these considerations, the Council may consider any other risk-related factors that the Council deems appropriate. 12 U.S.C. 5323(a)(2)(K) and (b)(2)(K).

information available through existing public and regulatory sources, nonbank financial companies should be able to assess whether they will be subject to further evaluation by the Council. During the second stage of the evaluation process, the Council will analyze the identified nonbank financial companies using a broad range of information available to the Council primarily through existing public and regulatory sources. The third stage of the process will involve a comprehensive analysis of those nonbank financial companies using information collected directly from the nonbank financial company, as well as the information used in the first two stages.

II. Council Determination Authority and Framework

As noted above, the Council may determine that a nonbank financial company will be supervised by the Board of Governors and be subject to prudential standards if the Council determines that (i) material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States (the ''First Determination Standard'') or (ii) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States (the ''Second Determination Standard,'' and, together with the First Determination Standard, the ''Determination Standards'').

The Council intends to interpret the term ''company'' broadly with respect to nonbank financial companies and other companies in connection with section 113 of the Dodd-Frank Act, to include any corporation, limited liability company, partnership, business trust, association, or similar organization.

This section provides definitions of the terms ''threat to the financial stability of the United States'' and ''material financial distress'' and describes how the Council expects to apply the Determination Standards.

a. Threat to the Financial Stability of the United States

The Determination Standards require the Council to determine whether a nonbank financial company could pose a threat to the financial stability of the United States. The Council will consider a ''threat to the financial stability of the United States'' to exist if there would be an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy.

In evaluating a nonbank financial company under one of the Determination Standards, the Council intends to assess how a nonbank financial company's material financial distress or activities could be transmitted to, or otherwise affect, other firms or markets, thereby causing a broader impairment of financial intermediation or of financial market functioning. An impairment of financial intermediation and financial market functioning can occur through several channels. The Council has identified the following channels as most likely to facilitate the transmission of the negative effects of a nonbank financial company's material financial distress or activities to other financial firms and markets:

- *Exposure.* A nonbank financial company's creditors, counterparties, investors, or other market participants have exposure to the nonbank financial company that is significant enough to materially impair those creditors, counterparties, investors, or other market participants and thereby pose a threat to U.S. financial stability. In its initial analysis of nonbank financial companies with respect to this channel, the Council expects to consider metrics including total consolidated assets, credit default swaps outstanding, derivative liabilities, total debt outstanding, and leverage ratio.
- *Asset liquidation.* A nonbank financial company holds assets that, if liquidated quickly, would cause a fall in asset prices and thereby significantly disrupt trading or funding in key markets or cause significant losses or funding problems for other firms with similar holdings. This channel would likely be most relevant for a nonbank financial company whose funding and liquid asset profile makes it likely that it would be forced to liquidate assets quickly when it comes under financial pressure. For example, this could be the case if a large nonbank financial company relies heavily on short-term funding. In its initial analysis of nonbank financial companies with respect to this channel, the Council expects to consider metrics including total consolidated assets and short-term debt ratio.
- *Critical function or service.* A nonbank financial company is no longer able or willing to provide a critical function or service that is relied upon by market participants and for which there are no ready substitutes. The analysis of this channel will incorporate a review of the competitive landscape for markets in which a nonbank financial company participates and for the services it provides (including the provision of liquidity to the U.S. financial system, the provision of credit to low-income, minority, or underserved communities, or the provision of credit to households, businesses and state and local governments), the nonbank financial company's market share, and the ability of other firms to replace those services. Due to the unique ways in which a nonbank financial company may provide a critical function or service to the market, the Council expects to apply company-specific analyses with respect to this channel, rather than applying a broadly applicable quantitative metric.

The Council believes that the threat a nonbank financial company may pose to U.S. financial stability through the impairment of financial intermediation and financial market functioning is likely to be exacerbated if the nonbank financial company is sufficiently complex, opaque, or difficult to resolve in bankruptcy such that its resolution in bankruptcy would disrupt key markets or have a material adverse impact on other financial firms or markets.

The Council intends to continue to evaluate additional transmission channels and may, at its discretion, consider other channels through which a nonbank financial company may transmit the negative effects of its material financial distress or activities and thereby pose a threat to U.S. financial stability.

b. First Determination Standard: Material Financial Distress

Under the First Determination Standard, the Council may subject a nonbank financial company to supervision by the Board of Governors and prudential standards if the Council determines that ''material financial distress'' at the nonbank financial company could pose a threat to U.S. financial stability. The Council believes that material financial distress exists when a nonbank financial company is in imminent danger of insolvency or defaulting on its financial obligations.

For purposes of considering whether a nonbank financial company could pose a threat to U.S. financial stability under this Determination Standard, the Council intends to assess the impact of the nonbank financial company's material financial distress in the context of a period of overall stress in the financial services industry and in a weak macroeconomic environment. The Council believes this is appropriate because in such a context, a nonbank financial company's distress may have a greater effect on U.S. financial stability.

c. Second Determination Standard: Nature, Scope, Size, Scale, Concentration, Interconnectedness, or Mix of Activities

Under the Second Determination Standard, the Council may subject a nonbank financial company to supervision by the Board of Governors and prudential standards if the Council determines that the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to U.S. financial stability. The Council believes that this Determination Standard will be met if the Council determines that the nature of a nonbank financial company's business practices, conduct, or operations could pose a threat to U.S. financial stability, regardless of whether the nonbank financial company is experiencing financial distress. The Council expects that there likely will be significant overlap between the outcome of an assessment of a nonbank financial company under the First and Second Determination Standards, because, in many cases, a nonbank financial company that could pose a threat to U.S. financial stability because of the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities could also pose a threat to U.S. financial stability if it were to experience material financial distress.

d. Analytic Framework for Statutory Considerations

As required by section 113 of the Dodd-Frank Act, the Council's determination will be based on its judgment that a firm meets one of the Determination Standards described above. In evaluating whether a firm meets one of the Determination Standards, the Council will consider each of the statutory considerations. The discussion below outlines the analytic framework that

the Council intends to use to organize its evaluation of a nonbank financial company under the statutory considerations and provides additional detail on the key data and analyses that the Council intends to use to assess the considerations.

1. Grouping of Statutory Considerations Into Six-Category Framework

The Dodd-Frank Act requires the Council to consider 10 considerations (described below) when evaluating the potential of a nonbank financial company to pose a threat to U.S. financial stability. The statute also authorizes the Council to consider ''any other risk-related factors that the Council deems appropriate.'' These statutory considerations will help the Council to evaluate whether one of the Determination Standards, as described in sections II.b and II.c above, has been met. The Council has developed an analytic framework that groups all relevant factors, including the 10 statutory considerations and any additional risk-related factors, into six categories: size, interconnectedness, substitutability, leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny. The Council expects to use these six categories to guide its evaluation of whether a particular nonbank financial company meets either Determination Standard. However, the Council's ultimate determination decision regarding a nonbank financial company will not be based on a formulaic application of the six categories. Rather, the Council intends to analyze a nonbank financial company using quantitative and qualitative data relevant to each of the six categories, as the Council determines is appropriate with respect to the particular nonbank financial company.

Each of the six categories reflects a different dimension of a nonbank financial company's potential to pose a threat to U.S. financial stability. Three of the six categories—size, substitutability, and interconnectedness—seek to assess the potential impact of the nonbank financial company's financial distress on the broader economy. Material financial distress at nonbank financial companies that are large, provide critical financial services for which there are few substitutes, or are highly interconnected with other financial firms or markets are more likely to have a financial or operational impact on other companies, markets, and consumers that could pose a threat to the financial stability of the United States. The remaining three categories—leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny of the nonbank financial company—seek to assess the vulnerability of a nonbank financial company to financial distress. Nonbank financial companies that are highly leveraged, have a high degree of liquidity risk or maturity mismatch, and are under little or no regulatory scrutiny are more likely to be more vulnerable to financial distress.

Each of the statutory considerations in sections 113(a)(2) and (b)(2) of the Dodd-Frank Act would be considered as part of one or more of the six categories. This is reflected in the following table, using the considerations relevant to a U.S. nonbank financial company for illustrative purposes.[3]

Statutory considerations:	Category or categories in which this consideration would be addressed:
(A) The extent of the leverage of the company	Leverage.
(B) The extent and nature of the off-balance-sheet exposures of the company	Size; interconnectedness.
(C) The extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies.	Interconnectedness.
(D) The importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system.	Size; substitutability.
(E) The importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities.	Substitutability.
(F) The extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse.	Size; interconnectedness; substitutability.
(G) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company.	Size; interconnectedness; substitutability.
(H) The degree to which the company is already regulated by 1 or more primary financial regulatory agencies.	Existing regulatory scrutiny.
(I) The amount and nature of the financial assets of the company	Size; interconnectedness.
(J) The amount and types of the liabilities of the company, including the degree of reliance on short-term funding.	Liquidity risk and maturity mismatch; size; interconnectedness.
(K) Any other risk-related factors that the Council deems appropriate	Appropriate category or categories based on the nature of the additional risk-related factor.

2. Six-Category Framework

The discussion below describes each of the six categories and how these categories relate to a firm's likelihood to pose a threat to financial stability. The sample metrics set forth below under each category are representative, not exhaustive, and may not apply to all nonbank financial companies under evaluation. The Council may apply the sample metrics in the context of stressed market conditions.

Interconnectedness

Interconnectedness captures direct or indirect linkages between financial companies that may be conduits for the transmission of the effects resulting from a nonbank financial company's material financial distress or activities. Examples of the key conduits through which the effects may travel are a nonbank financial company's direct or indirect exposures to counterparties (including creditors, trading and derivatives counterparties, investors, borrowers, and other participants in the financial markets). Interconnectedness depends not only on the number of counterparties that a nonbank financial company has, but also on the importance of that nonbank financial company to its counterparties and the extent to which the counterparties are interconnected with other financial firms, the financial system and the broader economy. The Council's assessment of interconnectedness is intended to determine whether a nonbank financial company's exposure to its counterparties would pose a threat to U.S. financial stability if that company encountered material financial distress.

For example, metrics that may be used to assess interconnectedness include:

- Counterparties' exposures to a nonbank financial company, including derivatives, reinsurance, loans, securities borrowing and lending, and lines of credit that facilitate settlement and clearing activities.
- Number, size, and financial strength of a nonbank financial company's counterparties, including the proportion of its counterparties' exposure to the nonbank financial company relative to the counterparties' capital.
- Identity of a nonbank financial company's principal contractual counterparties, which reflects the concentration of the nonbank financial

[3] The corresponding statutory considerations for a foreign nonbank financial company would be considered under the relevant categories indicated in the table.

company's assets financed by particular firms and the importance of the nonbank financial company's counterparties to the market.

- Aggregate amounts of a nonbank financial company's gross or net derivatives exposures and the number of its derivatives counterparties.
- The amount of gross notional credit default swaps outstanding for which a nonbank financial company or its parent is the reference entity.
- Total debt outstanding, which captures a nonbank financial company's sources of funding.
- Reinsurance obligations, which measure the reinsurance risk assumed from non-affiliates net of retrocession.

Substitutability

Substitutability captures the extent to which other firms could provide similar financial services in a timely manner at a similar price and quantity if a nonbank financial company withdraws from a particular market. Substitutability also captures situations in which a nonbank financial company is the primary or dominant provider of services in a market that the Council determines to be essential to U.S. financial stability. An example of the manner in which the Council may determine a nonbank financial company's substitutability is to consider its market share. The Council's evaluation of a nonbank financial company's market share regarding a particular product or service will include assessments of the ability of the nonbank financial company's competitors to expand to meet market needs; the costs that market participants would incur if forced to switch providers; the timeframe within which a disruption in the provision of the product or service would materially affect market participants or market functioning; and the economic implications of such a disruption. Concern about a potential lack of substitutability could be greater if a nonbank financial company and its competitors are likely to experience stress at the same time because they are exposed to the same risks. The Council may also analyze a nonbank financial company's core operations and critical functions and the importance of those operations and functions to the U.S. financial system and assess how those operations and functions would be performed by the nonbank financial company or other market participants in the event of the nonbank financial company's material financial distress. The Council also intends to consider substitutability with respect to any nonbank financial company with global operations to identify the substitutability of critical market functions that the company provides in the United States in the event of material financial distress of a foreign parent company.

For example, metrics that may be used to assess substitutability include:

- The market share, using the appropriate quantitative measure (such as loans originated, loans outstanding, and notional transaction volume) of a nonbank financial company and its competitors in the market under consideration.
- The stability of market share across the firms in the market over time.
- The market share of the company and its competitors for products or services that serve a substantially similar economic function as the primary market under consideration.

Size

Size captures the amount of financial services or financial intermediation that a nonbank financial company provides. Size also may affect the extent to which the effects of a nonbank financial company's financial distress are transmitted to other firms and to the financial system. For example, financial distress at an extremely large nonbank financial company that is highly interconnected likely would transmit risk on a larger scale than would financial distress at a smaller nonbank financial company that is similarly interconnected. Size is conventionally measured by the assets, liabilities and capital of the firm. However, such measures of size may not provide complete or accurate assessments of the scale of a nonbank financial company's risk potential. Thus, the Council also intends to take into account off-balance sheet assets and liabilities and assets under management in a manner that recognizes the unique and distinct nature of these classes. Other measures of size, such as numbers of customers and counterparties, may also be relevant.

For example, metrics that may be used to assess size include:

- Total consolidated assets or liabilities, as determined under generally accepted accounting principles in the United States (''GAAP'') or the nonbank financial company's applicable financial reporting standards, depending on the availability of data and the stage of the determination process.
- Total risk-weighted assets, as appropriate for different industry sectors.
- Off-balance sheet exposures where a nonbank financial company has a risk of loss, including, for example, lines of credit. For foreign nonbank financial companies, this would be evaluated based on the extent and nature of U.S.-related off-balance sheet exposures.
- The extent to which assets are managed rather than owned by a nonbank financial company and the extent to which ownership of assets under management is diffuse.
- Direct written premiums, as reported by insurance companies. This is the aggregate of direct written premiums reported by insurance entities under all lines of business and serves as a proxy for the amount of insurance underwritten by the insurance entities.
- Risk in force, which is the aggregate risk exposure from risk underwritten in insurance related to certain financial risks, such as mortgage insurance.
- Total loan originations, by loan type, in number and dollar amount.

Leverage

Leverage captures a company's exposure or risk in relation to its equity capital. Leverage amplifies a company's risk of financial distress in two ways. First, by increasing a company's exposure relative to capital, leverage raises the likelihood that a company will suffer losses exceeding its capital. Second, by increasing the size of a company's liabilities, leverage raises a company's dependence on its creditors' willingness and ability to fund its balance sheet. Leverage can also amplify the impact of a company's distress on other companies, both directly, by increasing the amount of exposure that other firms have to the company, and indirectly, by increasing the size of any asset liquidation that the company is forced to undertake as it comes under financial pressure. Leverage can be measured by the ratio of assets to capital, but it can also be defined in terms of risk, as a measure of economic risk relative to capital. The latter measurement can better capture the effect of derivatives and other products with embedded leverage on the risk undertaken by a nonbank financial company.

For example, metrics that may be used to assess leverage include:

- Total assets and total debt measured relative to total equity, which is intended to measure financial leverage.
- Gross notional exposure of derivatives and off-balance sheet obligations relative to total equity or to net assets under management, which is intended to show how much off-balance sheet leverage a nonbank financial company may have.
- The ratio of risk to statutory capital, which is relevant to certain insurance companies and is intended to show how much risk exposure a nonbank financial company has in relation to its ability to absorb loss.
- Changes in leverage ratios, which may indicate that a nonbank financial company is rapidly increasing its risk profile.

Liquidity Risk and Maturity Mismatch

Liquidity risk generally refers to the risk that a company may not have sufficient funding to satisfy its short-term needs, either through its cash flows, maturing assets, or assets salable at prices equivalent to book value, or through its ability to access funding markets. For example, if a company holds assets that are illiquid or that are subject to significant decreases in market value during times of market stress, the company may be unable to liquidate its assets effectively in response to a loss of funding. In order to assess liquidity, the Council may examine a nonbank financial company's assets to determine if it possesses cash instruments or readily marketable securities, such as Treasury securities, which could reasonably be expected to have a liquid market in times of distress. The Council may also review a nonbank financial company's debt profile to determine if it has adequate long-term funding, or can otherwise mitigate liquidity risk. Liquidity problems also can arise from a company's inability to roll maturing debt or to satisfy margin calls, and from demands for additional collateral, depositor withdrawals, draws on committed lines, and other potential draws on liquidity.

A maturity mismatch generally refers to the difference between the maturities of a company's assets and liabilities. A maturity mismatch affects a company's ability to survive a period of stress that may limit its access to funding and to withstand shocks in the yield curve. For example, if a company relies on short-term funding to finance

longer-term positions, it will be subject to significant refunding risk that may force it to sell assets at low market prices or potentially suffer through significant margin pressure. However, maturity mismatches are not confined to the use of short-term liabilities and can exist at any point in the maturity schedule of a nonbank financial company's assets and liabilities. For example, in the case of a life insurance company, liabilities may have maturities of 30 years or more, whereas the market availability of equivalently long-term assets may be limited, exposing the company to interest rate fluctuations and reinvestment risk.

For example, metrics that may be used to assess liquidity and maturity mismatch include:

- Fraction of assets that are classified as level 2 and level 3 under applicable accounting standards, as a measure of how much of a nonbank financial company's balance sheet is composed of hard-to-value and potentially illiquid securities.
- Liquid asset ratios, which are intended to indicate a nonbank financial company's ability to repay its short-term debt.
- The ratio of unencumbered and highly liquid assets to the net cash outflows that a nonbank financial company could encounter in a short-term stress scenario.
- Callable debt as a fraction of total debt, which provides one measure of a nonbank financial company's ability to manage its funding position in response to changes in interest rates.
- Asset-backed funding versus other funding, to determine a nonbank financial company's susceptibility to distress in particular credit markets.
- Asset-liability duration and gap analysis, which is intended to indicate how well a nonbank financial company is matching the re-pricing and maturity of the nonbank financial company's assets and liabilities.
- Short-term debt as a percentage of total debt and as a percentage of total assets, which indicates a nonbank financial company's reliance on short-term debt markets.

Existing Regulatory Scrutiny

The Council will consider the extent to which nonbank financial companies are already subject to regulation, including the consistency of that regulation across nonbank financial companies within a sector, across different sectors, and providing similar services, and the statutory authority of those regulators.

For example, metrics that may be used to assess existing regulatory scrutiny include:

- The extent of state or federal regulatory scrutiny, including processes or systems for peer review; inter-regulatory coordination and cooperation; and whether existing regulators have the ability to impose detailed and timely reporting obligations, capital and liquidity requirements, and enforcement actions, and to resolve the company.
- Existence and effectiveness of consolidated supervision, and a determination of whether and how non-regulated entities and groups within a nonbank financial company are supervised on a group-wide basis.
- For entities based outside the United States, the extent to which a nonbank financial company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority.

III. The Determination Process

The Council expects generally to follow a three-stage process of increasingly in-depth evaluation and analysis leading up to a proposed determination (a ''Proposed Determination'') that a nonbank financial company could pose a threat to the financial stability of the United States. Quantitative metrics, together with qualitative analysis, will inform the judgment of the Council when it is evaluating a nonbank financial company for a Proposed Determination. The purpose of this process is to help determine whether a nonbank financial company could pose a threat to the financial stability of the United States.

In the first stage of the process (''Stage 1''), a set of uniform quantitative metrics will be applied to a broad group of nonbank financial companies in order to identify nonbank financial companies for further evaluation and to provide clarity for nonbank financial companies that likely will not be subject to further evaluation. In Stage 1, the Council will rely solely on information available through existing public and regulatory sources. The purpose of Stage 1 is to enable the Council to identify a group of nonbank financial companies that are most likely to satisfy one of the Determination Standards.

In the second stage (''Stage 2''), the nonbank financial companies identified in Stage 1 will be analyzed and prioritized, based on a wide range of quantitative and qualitative information available to the Council primarily through public and regulatory sources. The Council will also begin the consultation process with the primary financial regulatory agencies or home country supervisors, as appropriate. As part of that consultation process, the Council intends to consult with the primary financial regulatory agency, if any, of each significant subsidiary of the nonbank financial company, to the extent the Council deems appropriate. The Council also intends to fulfill its statutory obligation to rely whenever possible on information available through the Office of Financial Research (the ''OFR''), member agencies, or the nonbank financial company's primary financial regulatory agencies before requiring the submission of reports from any nonbank financial company.[4]

Following Stage 2, nonbank financial companies that are selected for additional review will receive notice that they are being considered for a Proposed Determination and will be subject to in-depth evaluation during the third stage of review (''Stage 3''). Stage 3 will involve the evaluation of information collected directly from the nonbank financial company, in addition to the information considered during Stages 1 and 2. At the end of Stage 3, the Council may consider whether to make a Proposed Determination with respect to the nonbank financial company. If a Proposed Determination is made by the Council, the nonbank financial company may request a hearing in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule.[5]

The Council expects to follow this three-stage process and to consider the categories, metrics, thresholds, and channels described in this guidance to assess a nonbank financial company's potential to pose a threat to U.S. financial stability. In addition to the information described herein that the Council generally expects to consider, the Council also will consider quantitative and qualitative information that it deems relevant to a particular nonbank financial company, as each determination will be made on a company-specific basis. The Council may consider any nonbank financial company for a Proposed Determination at any point in the three-stage evaluation process described in this guidance if the Council believes such company could pose a threat to U.S. financial stability.

a. Stage 1: Initial Identification of Nonbank Financial Companies for Evaluation

In Stage 1, the Council will seek to identify a set of nonbank financial companies that merit company-specific evaluation. In this stage, the Council intends to apply quantitative thresholds to a broad group of nonbank financial companies. A nonbank financial company that is selected for further evaluation during Stage 1 will be assessed during Stage 2. During the Stage 1 process, the Council will evaluate nonbank financial companies using only data available to the Council, such as publicly available information and information member agencies possess in their supervisory capacities.

In the Stage 1 quantitative analysis, the Council intends to apply thresholds that relate to the framework categories of size, interconnectedness, leverage, and liquidity risk and maturity mismatch. These thresholds were selected based on (1) their applicability to nonbank financial companies that operate in different types of financial markets and industries, (2) the meaningful initial assessment that such thresholds provide regarding the potential for a nonbank financial company to pose a threat to financial stability in diverse financial markets, and (3) the current availability of data. These thresholds are intended to measure both the susceptibility of a nonbank financial company to financial distress and the potential for that nonbank financial company's financial distress to spread throughout the financial system. A nonbank financial company will be evaluated further in Stage 2 if it meets both the total consolidated assets threshold and any one of the other thresholds.[6] The thresholds are:

[4] *See* 12 U.S.C. 5322(d)(3).

[5] *See* 12 CFR 1310.21(c).

[6] While the Council expects that its determinations under section 113 of the Dodd-Frank Act will be with respect to individual legal entities, the Council has authority to assess nonbank financial companies, and their relationships with other nonbank financial companies and market participants, in a manner

• *Total Consolidated Assets.* The Council intends to apply a size threshold of $50 billion in total consolidated assets. This threshold is consistent with the Dodd-Frank Act threshold of $50 billion in assets for subjecting bank holding companies to enhanced prudential standards.

• *Credit Default Swaps Outstanding.* The Council intends to apply a threshold of $30 billion in gross notional credit default swaps (''CDS'') outstanding for which a nonbank financial company is the reference entity. Gross notional value equals the sum of CDS contracts bought (or equivalently sold). If the amount of CDS sold on a particular nonbank financial company is greater than $30 billion, this indicates that a large number of institutions may be exposed to that nonbank financial company and that if the nonbank financial company fails, a significant number of financial market participants may be affected. This threshold was selected based on an analysis of the distribution of outstanding CDS data for nonbank financial companies included in a list of the top 1,000 CDS reference entities.

• *Derivative Liabilities.* The Council intends to apply a threshold of $3.5 billion of derivative liabilities. Derivative liabilities equal the fair value of derivative contracts in a negative position. For nonbank financial companies that disclose the effects of master netting agreements and cash collateral held with the same counterparty on a net basis, the Council intends to calculate derivative liabilities after taking into account the effects of these arrangements. This threshold serves as a proxy for interconnectedness, as a nonbank financial company that has a greater level of derivative liabilities would have higher counterparty exposure throughout the financial system.

• *Total Debt Outstanding.* The Council intends to apply a threshold of $20 billion in total debt outstanding. The Council will define total debt outstanding broadly and regardless of maturity to include loans (whether secured or unsecured), bonds, repurchase agreements, commercial paper, securities lending arrangements, surplus notes (for insurance companies), and other forms of indebtedness. This threshold serves as a proxy for interconnectedness, as nonbank financial companies with a large amount of outstanding debt are generally more interconnected with the broader financial system, in part because financial institutions hold a large proportion of outstanding debt. An analysis of the distribution of debt outstanding for a sample of nonbank financial companies was performed to determine the $20 billion threshold. Historical testing of this threshold demonstrated that it would have captured many of the nonbank financial companies that encountered material financial distress during the financial crisis in 2007–2008, including Bear Stearns, Countrywide, and Lehman Brothers.

• *Leverage Ratio.* The Council intends to apply a threshold leverage ratio of total consolidated assets (excluding separate accounts) to total equity of 15 to 1. The Council intends to exclude separate accounts from this calculation because separate accounts are not available to claims by general creditors of a nonbank financial company. Measuring leverage in this manner benefits from simplicity, availability and comparability across industries. An analysis of the distribution of the historical leverage ratios of large financial institutions was used to identify the 15 to 1 threshold. Historical testing of this threshold demonstrated that it would have captured the major nonbank financial companies that encountered material financial distress and posed a threat to U.S. financial stability during the financial crisis, including Bear Stearns, Countrywide, IndyMac Bancorp, and Lehman Brothers.

• *Short-Term Debt Ratio.* The Council intends to apply a threshold ratio of total debt outstanding (as defined above) with a maturity of less than 12 months to total consolidated assets (excluding separate accounts) of 10 percent. An analysis of the historical distribution of the short-term debt ratios of large financial institutions was used to determine the 10 percent threshold. Historical testing of this threshold demonstrated that it would have captured a number of the nonbank financial companies that faced short-term funding issues during the financial crisis, including Bear Stearns and Lehman Brothers.

The Council intends generally to apply the Stage 1 thresholds using GAAP when such information is available. If GAAP information with respect to a nonbank financial company is not available, the Council may rely on data reported under statutory accounting principles, international financial reporting standards, or such other data as are available to the Council.

For purposes of evaluating any U.S. nonbank financial company, the Council intends to apply each of the Stage 1 thresholds based on the global assets, liabilities and operations of the company and its subsidiaries. In contrast, for purposes of evaluating any foreign nonbank financial company, the Council intends to calculate the Stage 1 thresholds based solely on the U.S. assets, liabilities and operations of the foreign nonbank financial company and its subsidiaries.

The Council intends to reapply the Stage 1 thresholds to nonbank financial companies using the most recently available data on a quarterly basis, or less frequently for nonbank financial companies with respect to which quarterly data are unavailable.

The Council intends to review the appropriateness of both the Stage 1 thresholds and the levels of the thresholds that are specified in dollars as needed, but at least every five years, and to adjust the thresholds and levels as the Council may deem advisable.

The Stage 1 thresholds are intended to identify nonbank financial companies for further evaluation by the Council and to help a nonbank financial company predict whether such company will be subject to additional review. Because the uniform quantitative thresholds may not capture all types of nonbank financial companies and all of the potential ways in which a nonbank financial company could pose a threat to financial stability, the Council may initially evaluate any nonbank financial company based on other firm-specific qualitative or quantitative factors, irrespective of whether such company meets the thresholds in Stage 1.

A nonbank financial company that is identified for further evaluation in Stage 1 would be further assessed during Stage 2 (the ''Stage 2 Pool'').

b. Stage 2: Review and Prioritization of Stage 2 Pool

After the Stage 2 Pool has been identified, the Council intends to conduct a robust analysis of the potential threat that each of those nonbank financial companies could pose to U.S. financial stability. In general, this analysis will be based on information already available to the Council through existing public and regulatory sources, including information possessed by the company's primary financial regulatory agency or home country supervisor, as appropriate, and information voluntarily submitted by the company. In contrast to the application of uniform quantitative thresholds to a broad group of nonbank financial companies in Stage 1, the Council intends to evaluate the risk profile and characteristics of each individual nonbank financial company in the Stage 2 Pool based on a wide range of quantitative and qualitative industry-specific and company-specific factors. This analysis will use the six-category analytic framework described in section II.d above. In addition, the Stage 2 evaluation will include a review, based on available data, of qualitative factors, including whether the resolution of a nonbank financial company, as described below, could pose a threat to U.S. financial stability, and the extent to which the nonbank financial company is subject to regulation.

Based on this analysis, the Council intends to contact those nonbank financial companies that the Council believes merit further evaluation in Stage 3 (the ''Stage 3 Pool'').

c. Stage 3: Review of Stage 3 Pool

In Stage 3, the Council, working with the OFR, will conduct a review of each nonbank financial company in the Stage 3 Pool using information collected directly from the nonbank financial company, as well as the information used in the first two stages. The review will focus on whether the nonbank financial company could pose a threat to U.S. financial stability because of the company's material financial distress or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company. The transmission channels discussed above, and other appropriate factors, will be used to evaluate a nonbank financial company's potential to pose a threat

that addresses the statutory considerations and such other factors as the Council deems appropriate. For example, for purposes of applying the six thresholds to investment funds (including private equity firms and hedge funds), the Council may consider the aggregate risks posed by separate funds that are managed by the same adviser, particularly if the funds' investments are identical or highly similar. In performing this analysis, the Council may use data reported on Form PF with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

to U.S. financial stability. The analytic framework consisting of the six categories set forth above, and the metrics used to measure each of the six categories, will assist the Council in assessing the extent to which the transmission of material financial distress is likely to occur.

Each nonbank financial company in the Stage 3 Pool will receive a notice (a ''Notice of Consideration'') that the nonbank financial company is under consideration for a Proposed Determination. The Notice of Consideration likely will include a request that the nonbank financial company provide information that the Council deems relevant to the Council's evaluation, and the nonbank financial company will be provided an opportunity to submit written materials to the Council.[7] This information will generally be collected by the OFR.[8] Before requiring the submission of reports from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the OFR, will coordinate with such agencies and will, whenever possible, rely on information available from the OFR or such agencies. Council members and their agencies and staffs will maintain the confidentiality of such information in accordance with applicable law.

Information requests likely will involve both qualitative and quantitative data. Information relevant to the Council's analysis may include confidential business information such as internal assessments, internal risk management procedures, funding details, counterparty exposure or position data, strategic plans, resolvability, potential acquisitions or dispositions, and other anticipated changes to the nonbank financial company's business or structure that could affect the threat to U.S. financial stability posed by the nonbank financial company.

In evaluating qualitative factors during Stage 3, the Council expects to have access, to a greater degree than during earlier stages of review, to information relating to factors that are not easily quantifiable or that may not directly cause a company to pose a threat to financial stability, but could mitigate or aggravate the potential of a nonbank financial company to pose a threat to the United States. Such factors may include the opacity of the nonbank financial company's operations, its complexity, and the extent to which it is subject to existing regulatory scrutiny and the nature of such scrutiny.

The Stage 3 analysis will also include an evaluation of a nonbank financial company's resolvability, which may mitigate or aggravate the potential of a nonbank financial company to pose a threat to U.S. financial stability. An evaluation of a nonbank financial company's resolvability entails an assessment of the complexity of the nonbank financial company's legal, funding, and operational structure, and any obstacles to the rapid and orderly resolution of the nonbank financial company in a manner that would mitigate the risk that the nonbank financial company's failure would have a material adverse effect on financial stability. In addition to the factors described above, a nonbank financial company's resolvability is also a function of legal entity and cross-border operations issues. These factors include the ability to separate functions and spin off services or business lines; the likelihood of preserving franchise value in a recovery or resolution scenario, and of maintaining continuity of critical services within the existing or in a new legal entity or structure; the degree of the nonbank financial company's intra-group dependency for liquidity and funding, payment operation, and risk management needs; and the size and nature of the nonbank financial company's intra-group transactions.

The Council anticipates that the information necessary to conduct an in-depth analysis of a particular nonbank financial company may vary significantly based on the nonbank financial company's business and activities and the information already available to the Council from existing public sources and domestic or foreign regulatory authorities. The Council will also consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company under consideration in a timely manner before the Council makes any final determination with respect to such nonbank financial company, and with appropriate foreign regulatory authorities, to the extent appropriate.

Before making a Proposed Determination, the Council intends to notify each nonbank financial company in the Stage 3 Pool when the Council believes that the evidentiary record regarding such nonbank financial company is complete.

Based on the analysis performed in Stages 2 and 3, a nonbank financial company will be considered for a Proposed Determination. Before a vote of the Council with respect to a particular nonbank financial company, the Council members will review information relevant to the consideration of the nonbank financial company for a Proposed Determination. After this review, the Council may, by a vote of two-thirds of its members (including an affirmative vote of the Council Chairperson), make a Proposed Determination with respect to the nonbank financial company. Following a Proposed Determination, the Council intends to issue a written notice of the Proposed Determination to the nonbank financial company, which will include an explanation of the basis of the Proposed Determination. The Council expects to notify any nonbank financial company in the Stage 3 Pool if the nonbank financial company, either before or after a Proposed Determination of such nonbank financial company, ceases to be considered for determination. Any nonbank financial company that ceases to be considered at any time in the Council's determination process may be considered for a Proposed Determination in the future at the Council's discretion.

A nonbank financial company that is subject to a Proposed Determination may request a nonpublic hearing to contest the Proposed Determination in accordance with section 113(e) of the Dodd-Frank Act. If the nonbank financial company requests a hearing in accordance with the procedures set forth in § 1310.21(c) of the Council's rule,[9] the Council will set a time and place for such hearing. The Council will (after a hearing, if a hearing is requested), determine by a vote of two-thirds of the voting members of the Council (including the affirmative vote of the Chairperson) whether to subject such company to supervision by the Board of Governors and prudential standards. The Council will provide the nonbank financial company with written notice of the Council's final determination, including an explanation of the basis for the Council's decision. When practicable and consistent with the purposes of the determination process, the Council intends to provide a nonbank financial company with a notice of a final determination at least one business day before publicly announcing the determination pursuant to § 1310.21(d)(3), § 1310.21(e)(3) or § 1310.22(d)(3) of the Council's rule.[10] The Council does not intend to publicly announce the name of any nonbank financial company that is under evaluation for a determination prior to a final determination with respect to such company. In accordance with section 113(h) of the Dodd-Frank Act, a nonbank financial company that is subject to a final determination may bring an action in U.S. district court for an order requiring that the determination be rescinded.

Dated: April 3, 2012.

Rebecca Ewing,

Acting Executive Secretary, Department of the Treasury.

[FR Doc. 2012–8627 Filed 4–10–12; 8:45 am]

BILLING CODE 4810–25–P–P

[7] *See* section 1310.21(a) of the rule.

[8] Under section 112(d) of the Dodd-Frank Act, if the Council is unable to determine whether a U.S. nonbank financial company poses a threat to U.S. financial stability based on such information, the Council may request that the Board of Governors conduct an examination of the nonbank financial company to determine whether it should be supervised by the Board of Governors.

[9] *See* 12 CFR 1310.21(c).

[10] *See* 12 CFR 1310.21(d)(3), 1310.21(e)(3) and 1310.22(d)(3).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0099; Airspace Docket No. 12–ASO–11]

Amendment of Class D Airspace; Cocoa Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D airspace at Cape Canaveral Skid Strip, Cocoa Beach, FL, by correcting the geographic coordinates of the airport to aid in the navigation of our National Airspace System and by removing the

reference of St. Petersburg Automated Flight Service Station from the descriptor. This action enhances the safety and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport.

DATES: Effective 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA received notice from the National Aeronautical Navigation Services (NANS) that St. Petersburg Automated Flight Service Station has closed and its reference should be updated in the descriptor of Cape Canaveral Skid Strip, Cocoa Beach, FL. Also, the geographic coordinates for the airport need correcting to coincide with the FAAs aeronautical database.

Class D airspace designations are published in Paragraphs 5000, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D airspace at Cocoa Beach, FL. The geographic coordinates of the Cape Canaveral Skid Strip are corrected to coincide with the FAAs aeronautical database and St. Petersburg Automated Flight Service Station will be removed from the descriptor. Accordingly, since this is an administrative change, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553 (b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes and amends controlled airspace at Cape Canaveral Skid Strip, Cocoa Beach FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Cocoa Beach, FL [Amended]

Cape Canaveral Skid Strip, FL

(Lat. 28°28′04″ N., long. 80°34′01″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.4-mile radius of the Cape Canaveral Skid Strip. This airspace lies within the confines of R–2932 and is effective on a random basis. The effective days and times are continuously available from Miami Automated Flight Service Station.

Issued in College Park, Georgia, on March 30, 2012.

Barry A . Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–8558 Filed 4–10–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0255; FRL–9657–4]

Air Quality Implementation Plans; Kentucky; Attainment Plan for the Kentucky Portion of the Huntington-Ashland 1997 Annual $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Kentucky state implementation plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), to EPA on December 3, 2008, for the purpose of providing for attainment of the 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the Kentucky portion of the Huntington-Ashland, West Virginia-Kentucky-Ohio $PM_{2.5}$ nonattainment area (hereafter referred to as the ''Huntington-Ashland Area'' or ''Area''). The Huntington-Ashland Area is comprised of Boyd County and a portion of Lawrence County in Kentucky; Cabell and Wayne Counties and a portion of Mason County in West Virginia; and Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio. The Kentucky plan at issue in this action (hereafter referred to as the ''$PM_{2.5}$ attainment plan'') pertains only to the Kentucky portion of the Huntington-Ashland Area. As proposed on January 30, 2012, EPA is approving Kentucky's $PM_{2.5}$ attainment plan, which includes an attainment demonstration; reasonably available control technology (RACT) and reasonably available control measures (RACM); reasonable further

progress (RFP); base-year and attainment-year emissions inventories; contingency measures; and, for transportation conformity purposes, an insignificance determination for direct $PM_{2.5}$ and nitrogen oxides (NO_X) for the mobile source contribution to ambient $PM_{2.5}$ levels for the Commonwealth's portion of the Huntington-Ashland Area. This action is being taken in accordance with the Clean Air Act (CAA or Act) and the ''Clean Air Fine Particle Implementation Rule,'' hereafter referred to as the ''$PM_{2.5}$ Implementation Rule,'' published on April 25, 2007. EPA is also responding to adverse comments received on the proposed approval of Kentucky's $PM_{2.5}$ attainment plan.

DATES: This rule will be effective May 11, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0255. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA taking?

EPA is approving a SIP revision, submitted through the DAQ to EPA on December 3, 2008, for the purpose of demonstrating attainment of the 1997 Annual $PM_{2.5}$ NAAQS for the Kentucky portion of the Huntington-Ashland Area. Specifically, EPA is approving Kentucky's $PM_{2.5}$ attainment plan, which includes an attainment demonstration; an analysis of RACM/RACT; a RFP plan; base-year and attainment-year emissions inventories; contingency measures; and an insignificance determination for mobile direct $PM_{2.5}$ and NO_X emissions for transportation conformity purposes for Kentucky's portion of the Huntington-Ashland Area.

EPA has determined that Kentucky's $PM_{2.5}$ attainment plan for the 1997 Annual $PM_{2.5}$ NAAQS for its portion of the Huntington-Ashland Area meets applicable requirements of the CAA and the $PM_{2.5}$ Implementation Rule. More detail on EPA's rationale for this approval can be found in EPA's January 30, 2012, proposed rulemaking for this action (*see* 75 FR 4510). Section III of this rulemaking responds to the adverse comments received on EPA's January 30, 2012, proposal.

II. What is the background for EPA's action?

On April 25, 2007, EPA published the $PM_{2.5}$ Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20586). This rule describes the CAA framework and requirements for developing SIPs to achieve attainment in areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. Such attainment plans must include a demonstration that a nonattainment area will meet the applicable NAAQS within the timeframe provided in the statute. For the 1997 $PM_{2.5}$ NAAQS, an attainment demonstration must show that a nonattainment area will attain the standards as expeditiously as practicable, but within five years of designation (i.e., by an attainment date of no later than April 5, 2010, based on air quality data for 2007 through 2009). As mentioned above, Kentucky provided the Commonwealth's SIP revision with the attainment plan (the subject of this rulemaking) for the Kentucky portion of the Huntington-Ashland Area on December 3, 2008.

On September 7, 2011, EPA published a final rulemaking with a determination that the Huntington-Ashland Area has attained the 1997 Annual $PM_{2.5}$ NAAQS. *See* 76 FR 55542. That determination was based on the most recent three years of complete, quality-assured, quality controlled and certified ambient air monitoring data showing that the Area has met the 1997 Annual $PM_{2.5}$ NAAQS. EPA also determined, in the September 7, 2011, rulemaking, and in accordance with CAA 179(c), that the Huntington-Ashland Area had attained the 1997 Annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

As discussed in the September 7, 2011, rulemaking, EPA's determination of attainment [1] suspended the obligation for the State to meet planning SIP requirements for the Area for so long as the Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). The state must still submit required emissions inventories consistent with appropriate timelines. The suspended planning SIP submission obligations include the attainment demonstration (including in this case the mobile source insignificance determination submitted to satisfy transportation conformity requirements), associated RACM/RACT, RFP and the associated contingency measures. Despite the suspension of the aforementioned requirements for the Huntington-Ashland Area for the 1997 Annual $PM_{2.5}$ NAAQS, Kentucky has requested that EPA take action on its planning SIP for this Area in part because the SIP submittal includes the insignificance determination. Further, in September 2011, EPA agreed in a Consent Decree to take action on these submissions.

EPA notes that on December 22, 2011, EPA published a proposal to approve the State of Ohio's request to redesignate to attainment the Ohio portion of the Huntington-Ashland Area. 76 FR 79593. EPA has also received requests from Kentucky and the State of West Virginia to redesignate their respective portions of the Huntington-Ashland Area but has not yet proposed action on those submissions.

Monitoring data thus far available, but not yet certified, in the Air Quality System (AQS) database for 2011 show that this Area continues to meet the 1997 Annual $PM_{2.5}$ NAAQS at this time. As shown in the table below, ambient $PM_{2.5}$ levels in the Huntington-Ashland Area have declined steadily since

[1] The determination of attainment is not a redesignation of the Area from nonattainment to attainment and is not an indication that the Area will continue to maintain the standard for which the determination is made. It is merely a determination that the Area attained the standard for a particular three year period and also by the deadline. Please *see* EPA's September 7, 2011, rulemaking for more detail on the effects of a determination of attainment.

Kentucky submitted its $PM_{2.5}$ attainment plan in 2008.

ANNUAL AVERAGE DESIGN VALUE CONCENTRATIONS IN THE HUNTINGTON-ASHLAND AREA

Site name	County	Site No.	Design values (average of three consecutive annual average concentrations) (μg/m³)			
			2008	2009	2010	2011*
Huntington	Cabell, WV	54–011–0006	15.2	14.3	13.1	12.1
Ashland Primary (FIVCO)	Boyd, KY	21–019–0017	13.4	12.4	11.4	10.9
Ironton DOT	Lawrence, OH	39–087–0012	13.4	12.2	12.2	11.4

* Monitoring data for 2011 are available but not yet certified in the AQS database.

EPA understands that the Commonwealth chose not to withdraw the attainment plan SIP revision for the Huntington-Ashland Area because it includes a mobile insignificance determination for direct $PM_{2.5}$ and NO_X emissions from mobile sources. Therefore, as mentioned above, although the SIP planning requirements for the 1997 Annual $PM_{2.5}$ NAAQS have been suspended for the Huntington-Ashland Area, EPA is acting on Kentucky's attainment plan because of the Consent Decree obligation to do so and because it remains a submittal to EPA.

On January 30, 2012, EPA proposed to approve Kentucky's $PM_{2.5}$ attainment plan, which includes an attainment demonstration; RACT and RACM; RFP; base-year and attainment-year emissions inventories; contingency measures; and, for transportation conformity purposes, an insignificance determination for direct $PM_{2.5}$ and NO_X for the mobile source contribution to ambient $PM_{2.5}$ levels for the Commonwealth's portion of the Huntington-Ashland Area. As mentioned above, more detail on EPA's rationale for this approval can be found in EPA's January 30, 2012, proposed rulemaking for this action. *See* 77 FR 4510. Section III of this rulemaking responds to the adverse comments received on EPA's January 30, 2012, proposal.

III. What is EPA's response to comments?

On February 29, 2012, EPA received comments on EPA's January 30, 2012, proposal submitted by Robert Ukeiley on behalf of Sierra Club. In summary, the Commenter states EPA cannot approve the Kentucky December 3, 2008, SIP revision because it: (1) Relies on inaccurate and inadequate emission reductions in its attainment demonstration modeling and emissions inventory, in part because of the status of the NO_X SIP Call, CAIR and the industrial boiler/heater MACT (40 CFR part 63, subpart DDDDD); (2) relies on temporary and unenforceable emission reductions from the Big Sandy Power Plant; (3) has not been evaluated for reasonably available control measures for the nonattainment area; and (4) includes on-road mobile source emission calculations which fail to consider 15 percent ethanol in gasoline. The complete set of comments is provided in the docket for this rulemaking. A summary of the specific comments and EPA's responses to them are provided below.

Emission Reductions

Comment 1: The Commenter contends that it is problematic to ''credit'' emission reductions associated with the NO_X SIP Call because that is a cap-and-trade program. The Commenter cites to *NRDC* v. *EPA,* 571 F.3d 1245, 1257 (DC Cir. 2009) for support of the proposition that, because EPA cannot predict which sources will reduce emissions, EPA cannot rely on the NO_X SIP Call for future reductions. The Commenter makes a similar contention regarding the Clean Air Interstate Rule (CAIR).

The Commenter states that any source could decide at any time in the future to purchase emissions credits and increase its emissions and impacts to the Huntington-Ashland Area. The Commenter adds that emissions banking can also lead to violations of the NAAQS and prevents CAIR emission budgets from being permanent and enforceable emission limits. The Commenter concludes by explaining his opinion that, although DAQ modeled hypothetical effects of CAIR well beyond 2011 in its 2018 projected inventory, it is not even clear that EPA is fully enforcing CAIR at this point.

Response 1: EPA notes that the Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010, and that the emission control measures that led to that attainment were in place at least through that date. For this $PM_{2.5}$ attainment plan the modeled attainment year is 2009. The year 2018 was modeled by the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) for the purposes of Kentucky's Regional Haze SIP.

EPA disagrees with the Commenter's position that emission reductions occurring within the relevant nonattainment area cannot be relied upon for the purpose of attainment demonstrations if they are associated with the emissions trading programs established in the NO_X SIP Call and CAIR. The case cited by the Commenter *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009), does not support the Commenter's position and is entirely consistent with EPA's position here. That case addressed EPA's determination that the nonattainment RACT requirement was satisfied by the NO_X SIP Call trading program. The court emphasized that reductions outside the nonattainment area do not satisfy the RACT requirement and thus held that because EPA had not shown the trading program would result in sufficient reductions *in a nonattainment area,* its determination that the program satisfied RACT was not supported.[2] *Id.* at 1256–58. The court did not hold, as the Commenter suggests, that emissions trading programs must be ignored when evaluating nonattainment area requirements.

There is simply no support for the Commenter's argument that attainment modeling demonstrations must ignore all emission reductions achieved by the NO_X SIP Call and CAIR simply because the mechanism used to achieve the reductions is an emissions trading program. As a general matter, these programs cap and permanently reduce the total emissions allowed by sources subject to the programs. Any purchase of allowances and increase in emissions

[2] The court specifically elected not to vacate the RACT provision and left open the possibility that EPA may be able to reinstate the provision for particular nonattainment areas if, upon conducting a technical analysis, it finds the NO_X SIP Call results in greater emissions reductions in a nonattainment area than would be achieved if RACT-level controls were installed in that area. *Id.* at 1258.

by one source covered by the program necessitates a corresponding sale of allowances and reduction in emissions by another covered source. Given the regional nature of particulate matter, the corresponding emission reduction will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase. Where an area can show that it will attain the standard with the reductions from enforceable trading programs, as done here,[3] the area may take credit for the reductions from that program.

The Commenter's contention that EPA cannot rely on trading programs that allow banking is also not on point. The comment is not relevant in this context where the trading programs in question were in place through the attainment deadline and the Area did attain by that deadline. The fact that the Huntington-Ashland Area attained the $PM_{2.5}$ standard by the April 2010 attainment date with these trading programs in place belies the argument that banking of allowances might cause the Area to fail to attain by its attainment date. Moreover, there is no support for the Commenter's contention, based on the flawed premise that allowance banking somehow renders those programs' emission reduction requirements impermanent or unenforceable, that EPA must ignore reductions associated with any trading program that allows banking. In general, banking provides economic incentives for early reductions in emissions and encourages sources to install controls earlier than required for compliance with future caps on emissions. The fact that reductions may occur more quickly than required (freeing up allowances that may then be banked) does not, in any way, undermine the permanence or enforceability of the requirements in the underlying rule.

In sum, contrary to petitioner's contention, the decision of D.C. Circuit in *NRDC* v. *EPA* does not establish that emission reductions from cap and trade programs, or emission reductions from cap and trade programs that allow banking, may not be relied upon for attainment modeling demonstrations. As discussed in EPA's proposal notice, DAQ utilized appropriate emissions inventory and modeling guidance to make this demonstration, which is consistent with the Area's current status as attaining the standard. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

With regard to CAIR, EPA published this rule on May 12, 2005, to address the interstate transport requirements of the CAA. *See* 76 FR 70093. As originally promulgated, CAIR requires significant reductions in emissions of sulfur dioxide (SO_2) and NO_X to limit the interstate transport of these pollutants. In 2008, however, the D.C. Circuit remanded CAIR back to EPA. *North Carolina* v. *EPA,* 550 F.3d 1176. The Court found CAIR to be inconsistent with the requirements of the CAA, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *North Carolina* v. *EPA,* 550 F.3d at 1178. CAIR thus remained in place following the remand and was in place and enforceable through the April 5, 2010, attainment date.

In response to the court's decision, EPA has issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR FIPs for control periods in 2012 and beyond. *See* 76 FR 48322.

On December 30, 2012, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the D.C. Circuit stayed the Transport Rule pending the court's resolution of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

EPA does not believe that the circumstances set forth above make it inappropriate, in any way, to finalize its proposed approval of the Huntington-Ashland attainment plan. While the data that shows the Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline is impacted by CAIR, which is in place only temporarily, EPA's analysis for the Transport Rule demonstrates that the Area would be able to attain the NAAQS even in the absence of CAIR. *See* Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Cross-State Air Pollution Rule. Moreover, although the court has stayed the implementation of the Transport Rule at this time, EPA believes that the rule has a strong legal basis. To the extent that the current status of CAIR and the Transport Rule affect any of the criteria for approval of this SIP revision, EPA believes that the ongoing implementation and enforcement of CAIR during the period of the stay, coupled with the promulgation of the Transport Rule, provide adequate assurance of these components. EPA again notes that this action approves an attainment demonstration that the Area will attain in 2010, which the Area did. As of 2010, CAIR was an enforceable control measure applicable to the Area. Any issues of the effect of the ongoing litigation surrounding the Transport Rule which will replace CAIR will need to be addressed by the Area in any plan demonstrating maintenance of the $PM_{2.5}$ standard into the future, which is not at issue in this attainment demonstration.

Comment 2: The Commenter contends that EPA cannot approve the Kentucky submittal because DAQ included, among its controls, a hazardous air pollutant rule found at 40 CFR part 63, subpart DDDDD, that was vacated in June 2007. More specifically, the Commenter suggests that EPA cannot rely on a claim that emission reductions attributed to a vacated rule will be an ''insignificant fraction'' of total emissions.

Response 2: As noted by the Commenter, nonattainment plans must include ''a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants * * *'' *See, e.g.,* CAA section 172(c)(3). As a point of clarification, this is the inventory EPA is approving for the purposes of CAA section 172(c)(3). Kentucky selected 2002 as the base year for the emissions inventory in accordance with 40 CFR 51.1008(b). The 2002 emissions inventory was based on data developed by VISTAS contractors and submitted by the states to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emission source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated 2002 emissions inventory, which does not include the boiler MACT reductions.

EPA also notes that DAQ not only acknowledges that the final 2009 inventory and modeling demonstration include emissions reductions

[3] Although CAIR was remanded to EPA in 2008, it remained in force and enforceable through the April 5, 2010, attainment date.

attributable to the vacated rule, but also provides a reasonable demonstration for why such inclusion does not impact the results of the modeling. Following detailed analysis and presentation of calculations, DAQ summarizes that the emissions sensitivity results for the Boyd County, Kentucky, monitor indicate that the SO_2 and primary $PM_{2.5}$ emissions assumed under the vacated boiler MACT would result in a total increase in the ambient $PM_{2.5}$ concentration of 0.0009 micrograms per cubic meter ($\mu g/m^3$). DAQ reasonably concluded that this level of impact would not change the conclusion that the Huntington-Ashland Area would attain the 1997 Annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. As EPA indicated earlier in this rulemaking, EPA determined that the Huntington-Ashland Area attained the standard by April 5, 2010. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

Big Sandy Power Plant

Comment 3a: The Commenter asserts that the Big Sandy Power Plant in Lawrence County, Kentucky, is the largest single source of $PM_{2.5}$ precursor emissions in the Huntington-Ashland Area and raises several issues associated with Kentucky's treatment of the plant's emissions. First, the Commenter contends that DAQ's attainment year modeling relies on artificially low emissions from the Big Sandy Power Plant because, the Commenter alleges, Kentucky modeled attainment during 2008, which the Commenter states was the ''largest economic recession in recent times.'' To support its contention, the Commenter identifies heat input data and SO_2 and NO_X emissions data for Big Sandy's Unit 1 and Unit 2 for the years 2007 through 2010. The Commenter concludes by saying that EPA must require Kentucky's SIP to include enforceable limits for both Big Sandy units, restricting emissions to the lowest levels achieved during the attainment modeling years, 2007–2011.

Response 3a: As an initial point of clarification, Kentucky modeled attainment during 2009, not 2008 as stated by the Commenter. *See* Chapter 6 of the attainment demonstration narrative. Additionally, as shown in EPA's January 30, 2012, proposal notice, all 2009 predicted (modeled) annual $PM_{2.5}$ design values for the monitors of the Huntington-Ashland Area were higher than the values actually measured at those sites in 2009. Further, the emissions assumed for the Big Sandy Power Plant were projections based upon DAQ's knowledge of the facility's future plans when the modeling was performed, not actual emissions that occurred in 2008. Based on actual ambient data, EPA has already determined that the Area attained the 1997 Annual $PM_{2.5}$ standard by its April 5, 2010, attainment date. The 2008 economic downturn was irrelevant to, and in fact occurred after, the modeling results were produced. Finally, EPA finds that the modeling conducted for the 2009 attainment year used the VISTAS Best & Final emissions inventory. *See* $PM_{2.5}$ attainment plan submittal, Appendix F (''DRAFT Documentation of the Base G2 and Best & Final 2002 Base Year, 2009 and 2018 Emission Inventories for VISTAS''), page 3. This inventory shows Big Sandy Unit 1 having neither selective catalytic reduction (SCR) nor a scrubber in 2009, and Unit 2 having SCR since 2003 but no scrubber in 2009. *See* $PM_{2.5}$ attainment plan submittal, Appendix I (''EGU CONTROLS FOR COAL AND OIL/GAS UNITS FOR THE BEST & FINAL INVENTORY'') of Appendix F, page 260. This is consistent with what is shown for these units on EPA's Clean Air Market Division's Web site. For these reasons, EPA has determined that the Commenter has not provided a basis on which to disapprove the revision with respect to the above-described modeling issues.

With regard to the Commenter's statements about emission limits, the Big Sandy facility has numerous emission limitations for relevant pollutants. In addition, the facility was included in the October 2007 federal Consent Decree resolving an enforcement matter between EPA and American Electric Power Company which operates the Big Sandy facility. *See http://www.epa.gov/compliance/resources/cases/civil/caa/americanelectricpower1007.html* (last visited 3/15/12) for additional information. The facility is also subject to a number of other CAA programs including but not limited to the regional haze program. As part of Kentucky's regional haze SIP, on which EPA recently took final action, the facility will be installing ammonia injection controls on Unit 1 and flue gas desulfurization on Unit 2.[4] Through these and other requirements, the facility is subject to enforceable emission limits. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

[4] Final action was signed by the Region 4 Administrator on March 13, 2012.

Comment 3b: The Commenter states that DAQ's attainment demonstration modeling lists emission controls at the Big Sandy Power Plant inaccurately. The Commenter contends that DAQ made adjustments to its Integrated Planning Model (IPM) results for the 2009 and 2018 electric generating unit (EGU) inventories to account for various control measures and that this renders DAQ's modeling flawed for the attainment year of 2009. The Commenter concludes that EPA should require DAQ to include in the Kentucky SIP an enforceable schedule for installation of a SCR and scrubber at Big Sandy.

Response 3b: As noted in the response above, the modeling presented by Kentucky used the correct assumptions about emission controls at Big Sandy in 2009. The 2002 emissions inventory was based on data that was developed by the VISTAS contractors and submitted by the states to the 2002 National Emissions Inventory. As required by section 172(c)(3), and as discussed in the modeling documentation submitted by Kentucky, the 2002 base year inventory is an inventory of actual emissions in the Area. For the projected 2009 attainment year inventory, VISTAS relied primarily on the IPM to project future power generation and to calculate the impact of future emission control programs as of October 1, 2007. The State and local agencies were then asked to identify any updates needed to better reflect current information on when and where future controls would occur based on the best available data from state rules, enforcement agreements, compliance plans, permits and other sources. *See* $PM_{2.5}$ attainment plan submittal, Appendix F (''DRAFT Documentation of the Base G2 and Best & Final 2002 Base Year, 2009 and 2018 Emission Inventories for VISTAS''). Kentucky indicated that Big Sandy Unit 1 was not expected to have a scrubber or SCR control operational in 2009 (IPM had projected these controls would be in use by Big Sandy Unit 1 in 2009). In February 2008, VISTAS used this updated information in completing the Best & Final inventory, which was used in the modeling relied upon by Kentucky.

Further, as explained earlier, the facility is subject to several CAA programs involving the installation of controls and/or specific emission limits for relevant pollutants. The Area has demonstrated attainment of the $PM_{2.5}$ NAAQS already and, considering future controls and limits, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

Reasonably Available Control Measures

Comment 4a: The Commenter raises several issues regarding the Huntington-Ashland Area's RACM/RACT analysis. First, the Commenter states that DAQ did not conduct a RACM/RACT analysis for this Area, but rather, another nearby area, the bi-state Louisville Area (Kentucky and Indiana).

Response 4a: Kentucky's December 3, 2008, SIP revision included attainment plans for all three of Kentucky's nonattainment areas for the 1997 Annual $PM_{2.5}$ NAAQS: Louisville, Kentucky-Indiana; Cincinnati-Hamilton, Ohio-Kentucky-Indiana; and Huntington-Ashland, West Virginia-Kentucky-Ohio. Although DAQ summarizes, in chapter 7 of the December 3, 2008 SIP revision, a detailed air quality analysis contracted for the Louisville Area, the overall RACM and RACT discussion is intended for all three of the identified $PM_{2.5}$ nonattainment areas.

EPA interprets RACT for $PM_{2.5}$ as linked to attainment needs of an area. If an area is attaining the $PM_{2.5}$ NAAQS, EPA deems the RACT requirement to be satisfied. Therefore, under EPA's interpretation of the RACT requirement, as it applies to $PM_{2.5}$, Kentucky has satisfied the requirement.

In accordance with 40 CFR section 51.1004(c), EPA's September 7, 2011, determination that the Huntington-Ashland Area has attained the 1997 Annual $PM_{2.5}$ NAAQS suspended the requirement for the Area to submit an attainment demonstration and associated RACM, including RACT, related to the 1997 Annual $PM_{2.5}$ NAAQS. EPA has noted that certain language in the preamble of the $PM_{2.5}$ Implementation Rule contradicts the regulatory text in 40 CFR 51.1004(c). On May 22, 2008, EPA issued a memorandum ''to eliminate any confusion that could result from this erroneous statement.'' Memorandum from William T. Harnett, Director, Air Quality Policy Division to Regional Air Division Directors, ''$PM_{2.5}$ Clean Data Policy Clarification.'' This memorandum states:

''Section 51.1004(c) provides that: 'Upon a determination by EPA that an area designated nonattainment for the $PM_{2.5}$ NAAQS has attained the standard, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the $PM_{2.5}$ NAAQS shall be suspended. * * *'

''Section 51.1010 provides in part: 'For each $PM_{2.5}$ nonattainment area, the State shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonably available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.'

''Thus the regulatory text defines RACT as included in RACM, and provides that it is only required insofar as it is necessary to advance attainment. *See* also section 51.1010(b). As a result, when an area is attaining the standard, the suspension of the RACM requirement pursuant to 51.1004(c) necessarily includes the suspension of the RACT requirement.''

EPA has already determined that the Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS by its April 2010 attainment date based on controls that were in force at least through that date. In addition, as explained above, modeling done for the Cross-State Air Pollution Rule demonstrates that the Area would attain in the absence of CAIR. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

Comment 4b: The Commenter appears to disagree with EPA's interpretation of 40 CFR 51.1010 and contends that measures must be adopted which are necessary to demonstrate attainment as expeditiously as practicable.

Response 4b: Section 51.1010(b) of the $PM_{2.5}$ Implementation Rule provides that ''[p]otential measures that are reasonably available considering technical and economic feasibility must be adopted as RACM if, considered collectively, they would advance the attainment date by one year or more.'' In order to advance the attainment date by at least one year, the state would first have to know their projected attainment date. As stated in EPA's January 30, 2012, proposed rulemaking, Kentucky participated in a modeling project of the Association for Southeastern Integrated Planning and VISTAS. Modeling projections were provided in January 2008. While showing the Area would attain by no later than five years from designation (i.e., by no later than April 5, 2010), there was not time for the State to develop measures that could possibly advance the attainment date by one year. This would have been particularly true for any new control requirements, which would have required a legislative rulemaking process that can take a year or more. Further, as stated above, because the Huntington-Ashland Area is now attaining the $PM_{2.5}$ standard, Kentucky has satisfied the RACT requirement without need for further measures. *See* Memorandum from William T. Harnett cited above. In addition, as explained earlier, Kentucky did provide a RACM/RACT analysis that applied for the Huntington-Ashland Area. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

Comment 4c: The Commenter opines that EPA will not be able to redesignate the Huntington-Ashland nonattainment area until it conducts a RACM/RACT analysis, citing *Wall* v. *EPA,* 265 F.3d 426, 442 (6th Cir. 2001).

Response 4c: This action does not propose to redesignate the Huntington-Ashland Area to attainment. However, EPA disagrees with the Commenter's assertion that EPA will not be able to redesignate the Huntington-Ashland Area until a RACM/RACT analysis is conducted. The September 7, 2011, determination that the Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS suspends the obligation to meet attainment planning requirements, including the RACM/RACT requirements so long as the Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). EPA disagrees with the Commenter's invocation, in the context of this rulemaking, of the ruling in *Wall* v. *EPA.* The *Wall* court addressed only the issue of adoption of RACT for ozone nonattainment areas under Part D subpart 2 of the Clean Air Act. Thus that case addressed a distinct set of statutory provisions for a different RACT requirement applicable only to ozone nonattainment areas. The *Wall* RACT ruling is therefore not applicable or pertinent to the $PM_{2.5}$ RACT provision here. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

On-Road Mobile Source Emissions Calculations

Comment 5: The Commenter states that EPA recently decided to allow up to 15 percent ethanol content in gasoline (E15), 76 FR 4662 (Jan. 26, 2011), which the Commenter believes will lead to an increase in NO_X and VOC emissions from many cars and light duty trucks, particularly those with pollution control devices not designed to deal with E15. The Commenter then contends that there is no indication that DAQ or EPA accounted for the increase in NO_X and VOC emissions that will result from use of E15.

Response 5: EPA disagrees with the Commenter's suggestion that the

Ethanol 15 (E15) rulemaking cited to by the Commenter will result in a significant increase in NO_X and VOC emissions in the Huntington-Ashland Area. As a general point of background, E15 is not mandated by EPA. Rather, EPA granted a partial waiver for vehicles model years 2001 and newer, light duty vehicles (76 FR 4662) to be able to use E15. To receive a waiver under CAA section 211(f)(4), a fuel or fuel additive manufacturer must demonstrate that a new fuel or fuel additive will not cause or contribute to the failure of engines or vehicles to achieve compliance with the emission standards to which they have been certified over their useful life. Data used to act upon the approval of the E15 partial waiver showed that model year 2001 and newer vehicles would still meet their certified engine standards for emissions for both short and long term use, and use of E15 would not significantly increase the emission from these engines. EPA's partial waiver for E15 is based on extensive studies done by the Department of Energy, as well as the Agency's engineering assessment to determine the effects of exhaust and evaporative emissions for the fleet prior to the partial waiver. The criteria for granting the waiver was not that there are no emission impacts of E15, but rather that vehicles operating on it would not be expected to violate their emission standards in-use.

As discussed in the waiver decision, there are expected to be some small emission impacts. E15 is expected to cause a small immediate emission increase in NO_X emissions. However, due to its lower volatility than the E10 currently in-use, its use is also expected to result in lower evaporative VOC emissions. Any other emissions impacts related to E15 would be a result of misfueling of E15 in model year 2000 and older vehicles, and recreational or small engines. EPA has approved regulations dealing specifically with the mitigation of misfueling and reducing the potential increase in emissions from misfueling. 76 FR 44406 (July 25, 2011).

The partial waivers that EPA has granted to E15 do not require that E15 be made or sold. The waivers merely allow fuel or fuel additive manufacturers to introduce E15 into commerce if they meet the waivers' conditions. Other federal, state and local requirements must also be addressed before E15 may be sold. The granting of the partial waivers is only one of several requirements for registration and distribution of E15.

E15 may never be used in Kentucky. But even if it is, there is no indication that any potential emission impacts would significantly alter DAQ's calculation of on-road mobile source emissions because of the small and opposite direction of emission impacts, the limited vehicle fleet which can use it, and the measures required to avoid mitigating misfueling. For these reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Kentucky's attainment plan.

IV. Final Action

EPA is approving a revision to the Kentucky SIP submitted to EPA by DAQ on December 3, 2008, for the purpose of demonstrating how the Kentucky portion of the Huntington-Ashland Area will achieve attainment of the 1997 Annual $PM_{2.5}$ NAAQS by no later than April 5, 2010. EPA previously determined on September 7, 2011, that the Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS by its April 2010 attainment date. *See* 76 FR 55542, September 7, 2011. EPA has also determined that the Area has since continued to attain that NAAQS. Kentucky's December 3, 2008, SIP revision includes an attainment demonstration; RACT and RACM analyses; RFP; base-year and attainment-year emissions inventories; contingency measures; and, for transportation conformity purposes, an insignificance determination for direct $PM_{2.5}$ and NO_X for the mobile source contribution to ambient $PM_{2.5}$ levels for the Commonwealth's portion of the Huntington-Ashland Area. After review and consideration of the relevant information and data, including the comments received, EPA has determined that Kentucky's December 3, 2008, SIP revision is consistent with the CAA and EPA's $PM_{2.5}$ Implementation Rule, and as such EPA is approving this SIP revision.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry at the end of the table for ''Huntington-Ashland 1997 $PM_{2.5}$ Attainment Plan'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Huntington-Ashland 1997 $PM_{2.5}$ Attainment Plan.	Boyd County; Portion of Lawrence County.	12/03/2008	4/11/2012 [Insert citation of publication].	For the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. 2012–8561 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0086; FRL–9343–3]

Acibenzolar-*S*-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of acibenzolar-*S*-methyl in or on berry, low growing, subgroup 13–07G. The Interregional Research Project No. 4 (IR–4) requested the tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 11, 2012. Objections and requests for hearings must be received on or before June 11, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0086. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; email address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, go to: *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection

or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0086 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 11, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0086, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 6, 2011 (76 FR 39358) (FRL–8875–6), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7818) by IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, in or on low growing berry subgroup 13–07G at 0.15 parts per million (ppm), and by amending the tolerance expression to read, ''tolerances are established for residues of acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, including its metabolites and degradates, in or on the commodity(s) listed. Compliance with the tolerance level is to be determined by measuring only those acibenzolar-*S*-methyl residues convertible to benzo(1,2,3)thiadiazole-7-carboxylic acid (CGA–210007), expressed as the stoichiometric equivalent of acibenzolar-*S*-methyl. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.*

One comment on the notice of filing was received. EPA's response to this comment is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acibenzolar-*S*-methyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with acibenzolar-*S*-methyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acibenzolar-*S*-methyl showed no significant toxicity in a battery of acute toxicity tests. Considerable skin sensitizing (contact allergenic) potential was demonstrated in a dermal sensitization study in guinea pigs.

In subchronic and chronic oral studies in rats, dogs and mice, signs of mild regenerative hemolytic anemia were consistently observed in all three species. Additional toxic effects observed in these same studies included decreases in body weight, body weight gain and/or food consumption. In a 28-day dermal study in rats, no systemic or dermal effects were observed at dose levels up to 1,000 milligrams/kilogram/day (mg/kg/day), the limit dose. No neurotoxic effects were observed at any dose in a subchronic neurotoxicity study in rats.

Prenatal and postnatal toxicity data are available including developmental toxicity studies in rats and rabbits, a developmental neurotoxicity (DNT) study in rats, and a 2-generation reproduction toxicity study in rats. Based on the developmental toxicity in rats and the developmental neurotoxicity studies in rats, there is concern for increased qualitative and/or quantitative susceptibility following *in utero* exposure to acibenzolar-*S*-methyl. In the rat developmental toxicity study, treatment related visceral malformations and skeletal variations were observed in fetuses at 200 mg/kg/day, the no observed adverse effect level (NOAEL) for maternal toxicity. In the developmental neurotoxicity study, offspring toxicity was observed at 82 mg/kg/day while no maternal toxicity was observed at 326 mg/kg/day, the highest dose tested (HDT). Additional developmental toxicity studies in rats and rabbits and reproduction studies in rats provided no indication of increased susceptibility of rat or rabbit fetuses or neonates compared to adult animals. In a dermal developmental toxicity study in rats, no maternal or developmental toxicity was observed at dose levels up to 500 mg/kg/day, the HDT.

Acibenzolar-*S*-methyl was classified by the Agency as ''not likely'' to be a human carcinogen based on negative carcinogenicity studies in male and female rats and mice and generally negative results in an acceptable battery of mutagenicity studies.

An immunotoxicity study required as part of new 40 CFR part 158 data requirements for registration of a pesticide has been submitted and is being reviewed by the Agency. Based on a preliminary review, the study is

acceptable and indicates no evidence of immunotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by acibenzolar-*S*-methyl as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Acibenzolar-*S*-methyl Human Health Risk Assessment for Proposed Use of Acibenzolar-*S*-methyl on Low Growing Berries Crop Subgroup 13–07G, dated February 23, 2012'', on pages 28–33 in docket ID number EPA–HQ–OPP–2011–0086–0007.

B. Toxicological Points of Departure (POD)/Levels of Concern (LOC)

Once a pesticide's toxicological profile is determined, EPA identifies toxicological POD and LOC to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the lowest dose at which adverse effects of concern are identified the LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for acibenzolar-*S*-methyl used for human risk assessment is shown in the following table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACIBENZOLAR-*S*-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENTS

Exposure/scenario	Point of departure	Uncertainty/FQPA safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (General Population).	NOAEL = 8.2 mg/kg/day.	UF_A = 10x ..... UF_H = 10x FQPA SF = 1x	aRfD = 0.082 mg/kg/day. aPAD = 0.082 mg/kg/day	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal LOAEL = was not observed. NOAEL = 326.2 mg/kg/day HDT.
Chronic Dietary (Females 13–49 years & Young Children).	NOAEL = 8.2 mg/kg/day.	UF_A = 10x ..... UF_H = 10x FQPA SF = 1x	aRfD = 0.082 mg/kg/day. aPAD = 0.082 mg/kg/day	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal LOAEL = was not observed. NOAEL = 326.2 mg/kg/day HDT.
Chronic Dietary (Adult Males and Females 50+ yrs).	NOAEL = 25 mg/kg/day.	UFA = 10x ..... UFH = 10x FQPA SF = 1x	cRfD = 0.25 mg/kg/day. cPAD = 0.25 mg/kg/day.	Chronic Toxicity—Dog; Co-critical; Chronic/Cancer—Rat & Mouse, Reproduction Toxicity—Rat. LOAEL = 105 mg/kg/day based on hemolytic anemia with compensatory response.
Incidental Oral	NOAEL = 8.2 mg/kg/day.	UFA = 10x ..... UFH = 10x	Occupational LOC for MOE = 100.	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal LOAEL = was not observed. NOAEL = 326.2 mg/kg/day HDT.
Dermal Short (1–30 days) and Intermediate (1–6 months) Term. DAF = 40%	NOAEL= 8.2 mg/kg/day.	UF_A = 10x ..... UF_H = 10x	Occupational LOC for MOE = 100.	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal LOAEL = was not observed. NOAEL = 326.2 mg/kg/day HDT.
Inhalation Short (1–30 days) and Intermediate (1–6 months) Term.	NOAEL= 8.2 mg/kg/day.	UF_A = 10x ..... UF_H = 10x	Occupational LOC for MOE = 100.	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal LOAEL = was not observed. NOAEL = 326.2 mg/kg/day HDT.
Cancer (all routes)	A ''not likely'' human carcinogen.			

Point of Departure = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. DAF = Dermal Absorption Factor. Since no inhalation absorption data are available, toxicity by the inhalation route is considered to be equivalent to the estimated toxicity by the oral route of exposure (100% absorption factor). mg/kg/day = milligram/kilogram/day. HDT = highest dose tested.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acibenzolar-*S*-methyl, EPA considered exposure under the petitioned-for tolerances as well as all existing acibenzolar-*S*-methyl tolerances in § 180.561. EPA assessed dietary exposures from acibenzolar-*S*-methyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for acibenzolar-*S*-methyl. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA performed a refined (probabilistic) acute dietary exposure analysis for the general population and all population subgroups. The acute analysis assumed a distribution of residues based on field trial data. Empirical and Dietary Exposure Evaluation Model (DEEM) default processing factors were used to modify the field trial data. Maximum screening-level percent crop treated (PCT) estimates were used for commodities for which data were available. If no PCT data were available, 100 PCT was assumed.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, the chronic analysis incorporated tolerance level residues and 100 PCT assumptions were used. DEEM default and empirical processing factors were used to modify the tolerance values.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that acibenzolar-*S*-methyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT. EPA did not use PCT data in assessing chronic exposure.

2. *Dietary exposure from drinking water.* The residues of concern for drinking water are acibenzolar-*S*-methyl, benzo(1,2,3) thiadiazole-7-carbothioic acid-*S*-methyl ester, convertible to benzo(1,2,3)thiadiazole-7-carboxylic acid (CGA–210007). The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for acibenzolar-*S*-methyl and CGA–210007 in drinking water. These simulations models take into account data on the physical, chemical, and fate/transport characteristics of acibenzolar-*S*-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on Tier II Pesticide Root Zone Model/Exposure Analysis Modeling System and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of acibenzolar-*S*-methyl and CGA–210007 for acute exposures are estimated to be 0.72 and 20.02 parts per billion (ppb), respectively, for surface water and 0.0000125 and 0.0812 ppb, respectively, for ground water. EDWCs of acibenzolar-*S*-methyl and CGA–210007 for chronic exposures for non-cancer assessments are estimated to be 0.02 and 8.09 ppb, respectively, for surface water and 0.0000125 and 0.0812 ppb, respectively, for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. CGA–210007 drinking water residues were included in the dietary exposure assessment as acibenzolar-*S*-methyl equivalents. CGA 210007 residues were converted to acibenzolar-*S*-methyl equivalents based on molecular weight (MW), i.e., (MW of acibenzolar (210) ÷ MW of CGA 210007 (180) × EDWC for CGA 210007). The acute analysis incorporated the entire time distribution of estimated drinking water concentrations adjusted to account for CGA–210007. For chronic dietary risk assessment, the water concentration of value 9.44 ppb was used to assess the contribution of CGA 210007 to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Acibenzolar-*S*-methyl is currently registered for the following uses that could result in residential exposures: Turfgrass use on sodfarms, golf courses, collegiate athletic fields, and lawns around commercial and industrial buildings. Residential exposure was assessed for adult handlers and for adult and child post-application activities. Exposure for adult and child golfers was used to aggregate adult post-application dermal exposure with dietary and drinking water exposure. The aggregate exposure assessment for children combines dermal and incidental oral post-application exposure with food and water exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found acibenzolar-*S*-methyl to share a common mechanism of toxicity with any other substances, and acibenzolar-*S*-methyl does not appear to produce a toxic metabolite produced by other substances. For the

purposes of this tolerance action, therefore, EPA has assumed that acibenzolar-*S*-methyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for acibenzolar-*S*-methyl includes adequate developmental toxicity studies in rats and rabbits, a DNT study in rats, and a 2-generation reproduction toxicity study in rats. As discussed in Unit III.A., several of these studies indicate that the young are quantitatively and qualitatively more sensitive to acibenzolar-*S*-methyl. Nonetheless, there are no residual uncertainties with regard to prenatal and/or postnatal toxicity since the NOAELs and the LOAELs have been identified for all effects of concern, a clear dose response has been well defined, and the PODs selected for risk assessment are protective of the fetal/offspring effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for acibenzolar-*S*-methyl is complete except for finalization of EPA's review of an immunotoxicity study. Recent changes to 40 CFR part 158 require immunotoxicity testing (OPPTS Guideline 870.7800) for pesticide registration and tolerance establishment. An immunotoxicity study has been submitted to EPA and is currently under review. The study is acceptable and preliminary review results show no evidence of immunotoxicty. In the absence of a completed assessment of the immunotoxicity study at this time, EPA evaluated available acibenzolar-*S*-methyl toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by acibenzolar-*S*-methyl and acibenzolar-*S*-methyl does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Therefore, EPA does not believe that the ultimate findings of the submitted immunotoxicity study will result in a POD lower than those already selected for acibenzolar-*S*-methyl risk assessment, and an additional database uncertainty factor is not needed to account for the lack of this study.

ii. There is concern for increased qualitative and/or quantitative susceptibility following *in utero* exposure to acibenzolar-*S*-methyl based on developmental toxicity and developmental neurotoxicity studies in rats. However, for the reasons noted above, the degree of concern for the increased susceptibility seen in these studies is low.

iii. There are no residual uncertainties identified in the exposure databases. The dietary risk assessment is conservative and will not underestimate dietary and/or non-dietary residential exposure to acibenzolar-*S*-methyl. The acute analysis assumed a distribution of residues based on field trial data and maximum PCT estimates were used for commodities for which data were available. The chronic dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acibenzolar-*S*-methyl in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by acibenzolar-*S*-methyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acibenzolar-*S*-methyl will occupy 35% of the aPAD for children 3–5 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acibenzolar-*S*-methyl from food and water will utilize 11% of the cPAD for children 1–2 and children 3–5 years old, the population groups receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acibenzolar-*S*-methyl is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Acibenzolar-*S*-methyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to acibenzolar-*S*-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 700 for females 13–49 years old from handler activities, and 1,600 for females 13–49 years old, and 800–1,000 for children 1–2 and 6–12 years old, respectively, from post-application exposure. Because EPA's LOC for acibenzolar-*S*-methyl is a MOE of 100 or below, these short-term aggregate MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, acibenzolar-*S*-methyl is not registered for any use patterns that would result in intermediate-term residential exposure.

Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for acibenzolar-*S*-methyl.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, acibenzolar-*S*-methyl is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to acibenzolar-*S*-methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High-performance liquid chromatography with ultraviolent detection (HPLC/UV) Method AG–617A) is available to enforce the tolerance expression. This method has undergone a successful tolerance method validation by the Agency.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for acibenzolar-*S*-methyl in or on berry, low growing, subgroup 13–07G.

C. Response to Comments

One comment was received from a private citizen who opposed authorization by EPA to allow ''all of these toxic chemicals since this Agency does not test their reaction with thousands of other chemicals that are already present * * *.''

The Agency has received this same comment on numerous previous occasions. Refer to **Federal Register** of January 7, 2005, 70 FR 1349 for the Agency's response to this comment.

V. Conclusion

Therefore, a tolerance is established for residues of acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, including its metabolites and degradates, in or on the berry, low growing, subgroup 13–07G at 0.15 ppm. Compliance with the tolerance level specified is to be determined by measuring only those acibenzolar-*S*-methyl residues convertible to benzo(1,2,3)thiadiazole-7-carboxylic acid (CGA–210007), expressed as the stoichiometric equivalent of acibenzolar-*S*-methyl.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''*Regulatory Planning and Review''* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''*Protection of Children From Environmental Health Risks and Safety Risks''* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''*Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''*Federalism''* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''*Consultation and Coordination With Indian Tribal Governments''* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.561 is amended by revising paragraph (a) to read as follows:

§ 180.561 Acibenzolar-S-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those acibenzolar-*S*-methyl residues convertible to benzo(1,2,3)thiadiazole-7-carboxylic acid (CGA–210007), expressed as the stoichiometric equivalent of acibenzolar-*S*-methyl, in or on the following raw agricultural commodities.

Commodity	Parts per million
Banana [1]	0.1
Berry, low growing, subgroup 13–07G	0.15
Onion, bulb, subgroup 3–07A	0.1
Spinach	1.0
Tomato, paste	3.0
Vegetable, brassica, leafy, group 5	1.0
Vegetable, cucurbit, group 9	2.0
Vegetable, fruiting, group 8	1.0
Vegetable, leafy, group 4	0.25

[1] There are no United States registrations for banana.

* * * * *

[FR Doc. 2012–8355 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0934; FRL–9333–6]

Silicic Acid, Sodium Salt etc.; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol; when used as an inert ingredient in a pesticide chemical formulation. Dow Corning Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol on food or feed commodities.

DATES: This regulation is effective April 11, 2012. Objections and requests for hearings must be received on or before June 11, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0934. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; email address: *debesai.alganesh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0934 in the subject line on the first page of your submission. All objections and requests for a hearing

must be in writing, and must be received by the Hearing Clerk on or before June 11, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0934, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of Thursday, December 8, 2011 (76 FR 76674) (FRL–9328–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7877) filed by Dow Corning Corporation, 2200 W. Salzburg Road, Midland, MI. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received one comment. EPA's response to this comment is discussed in Unit VIII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e): The polymer's number average MW of 75,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that Silicic acid, sodium salt, reaction products

with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol is 75,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol to share a common mechanism of toxicity with any other substances, and Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol.

IX. Conclusion

Accordingly, EPA finds that exempting residues of Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this

action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L, 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

One comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymer; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Silicic acid, sodium salt, reaction products with chlorotrimethylsilane and iso-propyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol, minimum number average molecular weight (in amu), 75,000.	None.
* * * * * * *	

[FR Doc. 2012–8733 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 111104664–2106–02]

RIN 0648–BB61

Shrimp Fisheries of the Gulf of Mexico and South Atlantic; Revisions of Bycatch Reduction Device Testing Protocols

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP) and the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (South Atlantic FMP), this rule certifies two new bycatch reduction devices (BRDs) for use in the Gulf of Mexico (Gulf) and South Atlantic shrimp fisheries, and revises a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf. Both BRDs represent modifications to the Composite Panel BRD, which is provisionally certified through May 24, 2012. This rule incorporates these BRDs into the list of allowable BRDs, and provides technical specifications for the construction and subsequent legal enforcement of these BRDs. Additionally, this rule reduces the shrimp effort threshold for the Gulf shrimp fishery. The intended effect of this final rule is to improve bycatch reduction efforts in the Gulf and South Atlantic shrimp fisheries, provide greater flexibility to the industry, reduce the potential adverse social and economic impacts to fishing communities of previous restrictions, and meet the requirements of National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) which

requires, to the extent practicable, the minimization of bycatch and bycatch mortality.

DATES: This rule is effective May 11, 2012, except for the amendments to § 622.41(g)(3)(ii) and Appendix D to part 622, paragraph G., which are effective May 25, 2012.

ADDRESSES: Documents related to this final rule may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GulfShrimp.htm.*

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, email: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The shrimp fishery in the exclusive economic zone (EEZ) of the Gulf is managed under the Gulf FMP prepared by the Gulf of Mexico Fishery Management Council (Gulf Council), and the shrimp fishery in the EEZ of the South Atlantic is managed under the South Atlantic FMP prepared by the South Atlantic Fishery Management Council (South Atlantic Council). The Gulf and South Atlantic FMPs are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On January 9, 2012, NMFS published a proposed rule to certify two new BRDs for use in the Gulf and South Atlantic shrimp fisheries, and revise a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf and requested public comment (77 FR 1045). On January 23, 2012, NMFS published a correction to the proposed rule to correct an error in the preamble, which stated that the ''Expanded Mesh BRD'' would be decertified for use by the Gulf shrimp fishery after May 24, 2012, when it should have stated the ''Extended Funnel BRD'' would be decertified for use in the Gulf shrimp fishery after May 24, 2012 (77 FR 3224). The proposed rule outlined the rationale for the actions contained in this final rule and is not repeated here.

This final rule certifies two new BRDs for use in the Gulf and South Atlantic shrimp fisheries, namely the Cone Fish Deflector Composite Panel BRD and the Square Mesh Panel (SMP) Composite Panel BRD, and provides technical specifications for the construction of these BRDs. The two BRDS that are currently provisionally certified, through May 24, 2012, namely the Composite Panel BRD and the Extended Funnel BRD (Gulf only), will automatically be decertified on the date their preliminary certification expires. The Extended Funnel BRD will continue to be certified in the South Atlantic.

This final rule also revises a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf. In accordance with regulations established when Joint Amendment 14/27 to the Gulf FMP and the FMP for the Reef Fish Fishery of the Gulf (Joint Amendment 14/27) were implemented on February 28, 2008 (73 FR 3117, January 29, 2008), the rate of shrimp trawl bycatch mortality on juvenile red snapper found in the 10 to 30 fathom depth contours, west of Mobile Bay, Alabama, must be reduced by at least 74 percent, compared to the average rate of fishing mortality documented during 2001 through 2003. Joint Amendment 14/27 further documented a direct correlation between shrimp trawl bycatch mortality and shrimping effort, as measured in days fished by shrimp vessels; meaning that shrimping effort, measured in days fished, can be used as proxy for shrimp trawl bycatch mortality rates. Based on data from 2001 through 2003, the benchmark mortality or ''F'' rate for shrimp trawl bycatch was 0.617. Using days fished as a proxy for bycatch mortality, that F rate corresponds to 82,811 days fished. To comply with Joint Amendment 14/27, the days fished needs to be reduced by 74 percent, to meet the required 74 percent reduction in bycatch mortality. To ensure that the F rate is reduced by 74 percent to 0.160, the number of days fished in a particular year cannot exceed 21,531 days (*i.e.,* a 74 percent reduction from 82,811 days). To date, the annual shrimping effort has not exceeded the threshold level of 21,531 days, and no closures in the following fishing year have been needed.

Joint Amendment 14/27 also established that this restriction would be relaxed in 2011 by requiring only a 67 percent reduction (not 74 percent) in shrimp trawl bycatch mortality. In accordance with Joint Amendment 14/27, this rule requires that the annual rate of shrimp trawl bycatch mortality must now be reduced by 67 percent, again using shrimping effort as a proxy for mortality. Using effort as measured in days fished as a proxy for bycatch mortaility, to reduce mortality by at least 67 percent, the number of days fished cannot now exceed a threshold of 27,328 days. The intent of relaxing this restriction on fishing effort is to benefit the shrimp fleet for its contribution to red snapper recovery, much like increasing allowable catch to the directed fishery as the red snapper stock recovers on its rebuilding trajectory.

Comments and Responses

One letter was received commenting on the proposed rule, identifying three issues. These comments and NMFS' responses are presented below.

Comment 1: One of the elements of the Composite Panel BRD that makes it preferable for use is that it can be constructed within the existing standard turtle excluder device (TED) extension. This allows the TED/BRD manufacturer to install both devices into the same extension of webbing, resulting in labor and material savings. The regulations should allow the BRD webbing extension to consist of the aft portion of a currently legal TED extension with all the components of the BRD otherwise installed, as described, and the openings cut into the existing TED extension, as described.

Response: This final rule does not prohibit installing the Composite Panel BRD designs (Composite Panel BRD, Cone Fish Deflector Composite Panel BRD, and the SMP Composite Panel BRD) within the existing TED extension, provided that the extension material in the aft portion of the TED meets the specifications for the BRD installation as well (*i.e.,* 24½ meshes by 150 to 160 meshes). There is no requirement to cut the TED extension off and sew a complete Composite Panel BRD extension on the shortened TED extension. However, this may be more efficient for some fishers who do not wish to take their TED extensions out of their nets and take them to the net shop to have a new Composite Panel BRD installed. Nevertheless, the BRD can be installed in the TED extension. The portion of the extension that constitutes the BRD extension must be installed no more than 4 meshes from the posterior edge of the TED and the BRD escape openings must be installed 1½ meshes from the leading edge of the BRD extension. Therefore, if a Composite Panel BRD design is installed in the TED extension, the BRD escape openings must be no more than 5½ meshes from the posterior edge of the grid.

Comment 2: The instructions describing the starting point for attachment of the leading edges of the panels should be changed from ''* * * extension starting 12 meshes up from the bottom center on each side * * *'' to ''* * * extension starting 12–14–16–18 meshes (*i.e.,* 10 percent of the circumference of the extension) up from the bottom center on each side * * *'' This would more accurately keep the opening in the same relative position to the original Composite Panel testing, which was done using a 120-mesh

extension, as in the original write-up of the provisional certification of the Composite Panel BRD. Establishing a requirement in terms of percentages instead of meshes would allow for the same opening position orientation in extensions as large as 180 meshes or even 200 meshes. This should also more accurately place the openings in the 150 to 160 mesh extensions.

Response: The Composite Panel BRD regulations, as published February 13, 2008 (73 FR 8219), require that the BRD be constructed with a webbing extension with the dimensions of 24½ meshes by 150 to 160 meshes, not 120 meshes. All configurations of the Composite Panel BRDs were tested with TED/BRD extensions of 150 to 160 meshes. It is not known what the effect of installing the BRD into an extension of 180 or 200 meshes would have regarding the performance of the BRD. Therefore, the portion of the extension that forms the BRD should be no more than 160 meshes. Allowing the current provisionally certified Composite Panel BRD to be installed in extensions of 180 to 200 meshes would require additional certification tests with the larger extensions.

Comment 3: The twine size of the currently described webbing extension is not stated in the proposed rule (77 FR 1045, January 9, 2012) for either modification of the Composite Panel BRD.

Response: The current regulations for the provisional certification of the Composite Panel BRD do not specify the twine size for the BRD extension. The purpose of this omission is to allow the Composite Panel BRDs to be installed in the TED extensions. NMFS acknowledges that the construction and installation manual posted on the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/sf/pdfs/Composite%20BRD%20Instructions.pdf*) erroneously specifies a specific twine size for the extension webbing. This error will be corrected in the new construction and installation manuals for the two new modifications of the Composite Panel BRD.

Changes From the Proposed Rule

The two BRDs whose provisional certification expires May 25, 2012 will still be provisionally certified at the time this final rule takes effect. NMFS prepared the regulatory text in the proposed rule under the assumption that the final rule would be effective on a date concurrent with the expiration of the provisional certification of these two BRDs. However, due to the timing of this final rule, the two provisionally certified BRDS may still be used until May 25, 2012. Therefore, the regulatory text has been revised to include these provisionally certified BRDs through their date of effectiveness.

The effective date for the BRD construction instructions in § 622.41, paragraph (g)(3)(ii), is delayed until May 25, 2012, when the two provisionally certified BRDs expire. Additionally, the effective date for the removal of the description of the Composite BRD in Appendix D to part 622, paragraph G., is delayed until May 25, 2012. Finally, the description of the two new BRDs being certified through this rule are added to Appendix D in part 622, in paragraphs H. and I., instead of paragraphs G. and H., as written in the proposed rule regulatory text.

To improve this rule's clarity, NMFS is adding the number of days fished that result from the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper in § 622.34 (l)(1).

NMFS is also correcting a typo in the description of the two new BRDs being certified through this rule. The term ''number'' is removed from the first sentence of part 622, Appendix D H.2.a. and I.2.a. The minimum construction and installation requirements for the Cone Fish Deflector Composite Panel BRD and the SMP Composite Panel BRD do not specify a number for the twine size of the stretch mesh, to allow for more flexibility in the construction of these BRDs, therefore the term ''number'' can be removed from these specifications.

Classification

The NMFS Assistant Administrator, Southeast Region, has determined that the actions contained in this rule are necessary for the conservation and management of the shrimp fishery in the Gulf and South Atlantic and that they are consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was proposed.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 6, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.34, the second sentence of paragraph (l)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) * * *

(1) * * * The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP (which corresponds in terms of annual shrimp effort to 27,328 days fished). * * *

* * * * *

■ 3. In § 622.41, paragraph (g)(3)(ii) is removed and reserved and paragraphs (g)(3)(i)(G) and (H) are added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(G) Cone Fish Deflector Composite Panel.

(H) Square Mesh Panel (SMP) Composite Panel.

* * * * *

■ 4. In Appendix D to part 622, paragraph G. is removed and reserved and paragraphs H. and I. are added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDS

* * * * *

H. *Cone Fish Deflector Composite Panel.*

1. *Description.* The Cone Fish Deflector Composite Panel BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD, except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing with square mesh panels on the inside instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Cone Fish Deflector Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1½-inch to 1¾-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24½-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1½-inch to 1⅝-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening.* There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5⁄16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension.* The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

I. *Square Mesh Panel (SMP) Composite Panel.*

1. *Description.* The SMP is a panel of square mesh webbing placed in the top of the cod end to provide finfish escape openings.

2. *Minimum Construction and Installation Requirements.* The SMP Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1½-inch to 1¾-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24½-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1½-inch to 1⅝-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening.* There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90

degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *SMP.* The SMP is constructed from a single piece of square mesh webbing with a minimum dimension of 5 squares wide and 12 squares in length with a minimum mesh size of 3-inch (76-mm) stretched mesh. The maximum twine diameter of the square mesh is number 96 twine (4 mm).

(e) *Cutting the SMP escape opening.* The escape opening is a rectangular hole cut in the top center of the cod end webbing. The posterior edge of the escape opening must be placed no farther forward that 8 ft (2.4 m) from the cod end drawstring (tie-off rings). The width of the escape opening, as measured across the cod end, must be four cod end meshes per square of the SMP (*i.e.,* a cut of 20 cod end meshes for a SMP that is 5 meshes wide). The stretched mesh length of the escape opening must be equal to the total length of the SMP. No portion of the SMP escape opening may be covered with additional material or netting such as chaffing webbing, which might impede or prevent fish escapement.

(f) *Installation of the SMP.* The SMP must be attached to the edge of the escape opening evenly around the perimeter of the escape opening cut with heavy twine.

[FR Doc. 2012–8730 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XB174

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/processors Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors (C/Ps) using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch apportioned to C/Ps using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 8, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2012 Pacific cod total allowable catch (TAC) apportioned to C/Ps using trawl gear in the Central Regulatory Area of the GOA is 847 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2012 Pacific cod TAC apportioned to C/Ps using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 547 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by C/Ps using trawl gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for C/Ps using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 5, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8710 Filed 4–6–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 70
Wednesday, April 11, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. #AMS–CN–12–0005]

RIN 0581–AD23

User Fees for 2012 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2012 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2011. These fees are also authorized under the Cotton Standards Act of 1923. The 2011 crop user fee was $2.20 per bale, and AMS proposes to continue the fee for the 2012 cotton crop at that same level. This proposed fee and the existing reserve are sufficient to cover the costs of providing classification services for the 2012 crop, including costs for administration and supervision.

DATES: Comments must be received on or before April 26, 2012.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Comments should be submitted in triplicate. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments will be available for public inspection during regular business hours at Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 2011 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2011 user fee for classification services was $2.20 per bale; the fee for the 2012 crop would be maintained at $2.20 per bale; the 2012 crop is estimated at 14,475,000 bales);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2011 crop, 15,000,000 bales were produced; and almost all of these bales were voluntarily submitted by growers for the classification service; and

(4) Based on the average price paid to growers for cotton from the 2010 crop of 0.8212 cents per pound, 500 pound bales of cotton are worth an average of $410 each. The proposed user fee for classification services, $2.20 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This proposed rule would maintain a 2011 user fee of $2.20 per bale charged to producers for cotton classification for the 2012 cotton crop. This fee is set at the same level as the 2011 user fee. The 2012 user fee was set in accordance to section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the

Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. Specifically, it states that the classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar amount per bale classed) is proposed for the 2012 cotton crop that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to at least four months of projected operating costs.

The user fee proposed to be charged cotton producers for cotton classification in 2012 is $2.20 per bale, which is the same fee charged for the 2011 crop. This fee is based on the preseason projection that 14,475,000 bales will be classed by the United States Department of Agriculture during the 2012 crop year.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the cotton classification fee at $2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at $2.20 per bale.

The fee for returning samples after classification in § 28.911 would remain at 50 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because user fees are not changing and it is anticipated that the proposed fees, if adopted, would be made effective for the 2012 cotton crop on July 1, 2012.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended to read as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: April 4, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8677 Filed 4–10–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580–AB12

United States Standards for Wheat

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the U.S. Standards for Wheat (wheat standards) under the U.S. Grain Standards Act (USGSA) to change the definition of Contrasting classes (CCL) in Hard White wheat and change the grade limits for shrunken and broken kernels (SHBN). GIPSA believes that these proposed changes will help to facilitate the marketing of wheat.

DATES: Comments must be received on or before June 11, 2012.

ADDRESSES: You may submit written or electronic comments on this proposed rule to:

- *Mail:* Tess Butler, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530–B, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''U.S. wheat standards proposed rule comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *www.regulations.gov* without change. If you send an email comment directly to GIPSA without going through *www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating email address or telephone number will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Also, all personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any

defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

GIPSA will post a transcript or report summarizing each substantive oral comment that we receive about this proposed rule. This would include comments about this rule made at any public meetings hosted by GIPSA during the comment period, unless GIPSA publically announces otherwise.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services support staff (202) 720–7486 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO, 64153; Telephone (816) 659–8403; Fax Number (816) 872–1258; email *Patrick.J.McCluskey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Wheat is defined in the wheat standards as grain that, before the removal of dockage, consists of 50 percent or more common wheat (*Triticum aestivum* L.), club wheat (*T. compactum* Host.), and durum wheat (*T. durum* Desf.), and not more than 10 percent of other grains for which Standards have been established under the USGSA (7 U.S.C. 71–87k) and that, after the removal of dockage, contains 50 percent or more of whole kernels of one or more of these wheats. The wheat standards identify eight market classes: Durum (DU) wheat, Hard Red Spring (HRS) wheat, Hard Red Winter (HRW) wheat, Soft Red Winter (SRW) wheat, Hard White (HDWH) wheat, Soft White (SWH) wheat, Unclassed wheat, and Mixed wheat.

Wheat is consumed primarily as a human food but is also used for animal feeding and industrial purposes. Wheat acreage under cultivation in the U.S. has decreased gradually from 1980 to the present, dropping from a high of over 88 million planted acres in 1981 to approximately 59 million acres in 2009 (USDA–NASS Crop Production Track Records—April 2010). During the same period, U.S. wheat producers produced a high of 2.785 billion bushels in 1981 to 2.220 billion bushels in 2009, with a low of 1.605 billion bushels in 2002.

Under the USGSA (7 U.S.C. 76), GIPSA is authorized to establish and maintain the wheat standards and for other grains regarding kind, class, quality and condition. The wheat standards, which were established on August 1, 1917, were last revised in 1993 and 2006, and appear in the USGSA regulations at 7 CFR 810.2201—810.2205. The wheat standards facilitate the marketing of wheat and define U.S. wheat quality and commonly used industry terms in the domestic and global marketplace; contain basic principles governing the application of the wheat standards, such as the type of sample used for a particular quality analysis; and, specify grades, grade requirements, special grades and special grade requirements.

On November 27, 2009, GIPSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (74 FR 62257) requesting public comment on what revisions, if any, are needed to the current wheat standards. GIPSA received 13 comments from wheat producers, breeders, market development groups, industry associations, and exporters.

One comment from a trade association representing approximately 1,000 grain, feed, processing and grain-related firms comprising more than 6,000 facilities that handle more than 70 percent of U.S. grains and oilseeds urged GIPSA not to propose any major changes to the wheat standards that would adversely impact the marketing system or current priorities and operations of GIPSA.

GIPSA received several comments related to its official grain inspection services regarding mycotoxin testing, predicting protein quality, certifying protein content, certifying the actual grade when the ''or better'' option is specified, and quality control in rail and container shipments. GIPSA will take no action on these comments in this proposed rule, however, because the comments are outside the scope of this rulemaking, which covers only possible revisions to the wheat standards.

GIPSA received several general comments that recommended amendments to the standards. The general comments and GIPSA's discussion of those comments follow:

Commenters stated that GIPSA should (1) consider using a flexible, generic approach to grading that would allow uniform blending of any U.S. wheat classes with the classes identified appropriately on any official grain inspection certificate, (2) develop a generic approach that would allow blending of any classes of wheat with the classes identified appropriately on the export certificate, and/or (3) develop appropriate class names for specific class blends that are being demanded in the marketplace.

GIPSA does not believe that the blending of wheat would facilitate the marketing of wheat, as a buyer may purchase Mixed wheat, and GIPSA can certify the percentage of various market classes. GIPSA believes it is more appropriate that market participants handle this issue contractually. While flour mills blend classes of wheat for milling, GIPSA does not believe that wheat buyers would want wheat sellers to assume responsibility for blending wheat for milling, given that flour mills typically have their own quality standards for wheat used in their mill mixes. Therefore, GIPSA will not propose any revisions to the wheat standards based on this comment.

Commenters also stated that the U.S. should lead in integrating processing parameters into the grading system (*i.e.,* thousand kernel weight and wheat size distribution).

For many years, GIPSA has made available wheat kernel average weight and diameter determinations, as measured by the Single Kernel Characterization System (SKCS). The wheat industry, however, has been slow in its acceptance of average weight and diameter determinations. Because the industry has shown little interest in SKCS results, GIPSA will not propose any revisions to the wheat standards based on this comment.

Commenters also urged GIPSA to begin studying how a simple, precise and repeatable flour yield test can be incorporated into the wheat standards.

This comment recommends that GIPSA initiate a research project, which is beyond the scope of this rulemaking. Therefore, GIPSA will not propose any revisions to the wheat standards based on this comment.

Finally, commenters stated that GIPSA should study appropriate ways to incorporate mycotoxins as a grading factor and implement a mycotoxin testing check sample program with naturally contaminated material.

GIPSA is developing a mycotoxin check sample program similar to other check sample programs that it currently has in place. Because GIPSA believes that offering mycotoxin testing as Official Criteria, rather than including as a grade determining factor, facilitates the market's ability to discover the price/value relationship, GIPSA will not propose any revisions to the wheat standards based on this comment.

Three specific issues emerged from comments to the ANPR that GIPSA believes are pertinent to revising the wheat standards. GIPSA received comments from nine commenters representing a broad cross section of the wheat industry regarding the definition of contrasting classes in hard white wheat. GIPSA received one comment

from a wheat market development organization regarding the grade limits for shrunken and broken kernels in U.S. No. 1 and U.S. No. 2. Finally, GIPSA received a comment from an organization representing grain millers regarding the limits for insect damaged kernels and live insects. Based on the comments received from the industry, GIPSA proposes to revise the wheat standards as follows:

Contrasting Class Definition

Of the comments to the ANPR received by GIPSA on the issue of revising the CCL definition, six commenters favored revision, two commenters opposed revision and one commenter stated that it was not opposed to revision. Revising the definition of CCL for HDWH has been discussed by various industry groups since the 2006 rulemaking, at meetings of producer organizations, grain handling organizations, and international market developers. GIPSA did not receive any comments from international users of HDWH in response to the ANPR.

Effective May 1, 2006, GIPSA revised the definition of CCL for hard red winter wheat and hard red spring wheat by removing hard white wheat as contrasting in those two classes (70 FR 8233). Subsequently, GIPSA heard from wheat industry stakeholders that said GIPSA should do the same thing for the CCL definition of hard white wheat (*i.e.,* GIPSA should remove hard red winter wheat and hard red spring wheat from the definition of CCL in hard white wheat, and allow those classes to function only as wheat of other classes). Doing so would permit five percent hard red winter wheat and/or hard red spring wheat in U.S. No. 2 hard white wheat, where currently U.S. No. 2 hard white wheat may not contain more than two percent hard red winter wheat and/or hard red spring wheat. Notably, GIPSA considered class purity when hard white wheat was established as a separate market class, effective May 1, 1990 (54 FR 48735).

In the 2006 rulemaking GIPSA stated that there would be no functional downside from allowing five percent hard white wheat in hard red winter wheat or hard red spring wheat, (where the previous grade limit was 2% for U.S. No. 2) because hard white wheat protein quality is equivalent, polyphenol oxidase is not an issue, extraction rate is equivalent, and reduced concentration of bitter compounds in hard white wheat is not problematic for hard red wheat products. GIPSA does assume however, that there would be no functional downside in flour quality from allowing an additional three percent of hard red wheat in hard white wheat (beyond the two percent already allowed). International and domestic users of hard white wheat have demonstrated their desire for low polyphenol oxidase concentration and concomitant reduced bitter flavor in products made with white wheat (*e.g.,* various styles of Asian noodles) as evidenced from sales of white wheat produced by other exporting nations. GIPSA understands that domestic users in the U.S., such as bread baking companies, may not have the same sensitivity to diminution of class purity as international users.

U.S. producers of hard white wheat and/or their market development organizations have told GIPSA that they are penalized by elevator owners when taking hard white wheat to an elevator. Producers allege that elevator owners do not want to handle hard white wheat separately from hard red wheat, but are willing to purchase hard white wheat at a discount. In situations where producers contract with wheat milling companies or co-operatives to produce hard white this reportedly does not occur. GIPSA does not know whether revising the definition of contrasting classes for hard white wheat will result in a cessation of discounts when producers offer hard white wheat for sale to the grain elevator operators. GIPSA has heard from wheat industry stakeholders that without the relief provided by revising the contrasting classes definition, producers may forego planting hard white wheat, causing supply shortages for domestic users of hard white wheat such as bread baking companies, and hamper future efforts to export hard white wheat.

Production of hard white wheat has not been robust except for a brief period (2003–2005) when the Federal government paid a planting incentive to producers under the Farm Security and Rural Investment Act of 2002 (Sec. 1616). Production was 0.26 to 0.33 million metric tons in the 3 years prior to 2003, spiked to 1.1 million metric tons under the planting incentive, then generally decreased in the ensuing years, dropping to 0.70 million metric tons in 2009 (USDA crop production annual 2005–2010). GIPSA believes that reduced planting may be attributed to lack of incentive, small export demand, special handling to keep HDWH segregated from hard red winter wheat and hard red spring wheat, and alternative crops with greater profit potential.

If desired, buyers can contractually specify a maximum of two percent hard red wheat in a hard white wheat purchase. Because buyers have this backstop, GIPSA is therefore proposing to revise the wheat standards to change the definition of contrasting classes in hard white wheat so that hard red winter wheat and hard red spring wheat are no longer contrasting classes, and are considered only as wheat of other classes. The grade limits would remain unchanged. The following tables illustrate the current situation and proposed changes for contrasting classes.

TABLE I (CURRENT)
PRIMARY CLASS

Minor class	*DU*	*HRS*	*HRW*	*SRW*	*HDWH*	*SWH*	*UNCL*
DU		CCL	CCL	CCL	CCL	CCL	WOCL.
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL.
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL.
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL.
HDWH	CCL	WOCL	WOCL	WOCL		WOCL	WOCL.
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL.
UNCL	CCL	CCL	CCL	CCL	CCL	CCL.	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

TABLE II (PROPOSED)
PRIMARY CLASS

Minor class	*DU*	*HRS*	*HRW*	*SRW*	*HDWH*	*SWH*	*UNCL*
DU		CCL	CCL	CCL	CCL	CCL	WOCL.
HRS	CCL		WOCL	WOCL	WOCL	CCL	WOCL.
HRW	CCL	WOCL		WOCL	WOCL	CCL	WOCL.
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL.
HDWH	CCL	WOCL	WOCL	WOCL		WOCL	WOCL.
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL.
UNCL	CCL	CCL	CCL	CCL	CCL	CCL.	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

Shrunken and Broken Kernel Grade Limits

GIPSA received one comment from a wheat market development organization recommending that grade limits for SHBN should be more restrictive for U.S. No. 1 and U.S. No. 2 graded wheat, leaving the grade limits unchanged for U.S. No. 3, 4, and 5 graded wheat. The commenter indicated that foreign millers have often suggested that SHBN content be reduced in U.S. No. 1 and 2 graded wheat, to help improve the value of the wheat being purchased. While making the SHBN grade limits more restrictive would not change wheat quality or affect the amount of wheat available at those grades, GIPSA believes that more restrictive SHBN grade limits would more accurately reflect the quality of wheat moving throughout the marketing system, thus offering users of these standards the best possible information from which to define quality and end-product yield.

GIPSA analyzed SHBN data available for over 100,000 official export and domestic inspection samples for all wheat classes in market years 2005 through 2009 (summarized in Table 1) to project the availability of wheat by grade, under the current and proposed grade limits. Under the current grade limits, 100 percent would have graded U.S. No. 1 if SHBN had been the grade determining factor. Under the proposed grade limits, 95 percent of all samples would have graded U.S. No. 1 if SHBN had been the grade determining factor, a reduction of 5 percent. Under the proposed limits, 100 percent of the samples would have graded U.S. No. 2 if SHBN was the grade determining factor. While GIPSA's analysis shows a 5 percent grade deflation at the U.S. No. 1 grade, virtually all wheat is traded at U.S. No. 2 or better (2 o.b.). Under the proposed grade limits, GIPSA's analysis showing 100 percent of samples being graded 2 o.b. means zero net effect on the amount of wheat available for shipping at export or elsewhere in the value chain.

TABLE 1

U.S. grade	G.L. (%) current	% C.D.	G.L. (%) proposed	% C.D.
#1	3.0	100.0	2.0	95.0
#2	5.0	100.0	4.0	100.0
#3	8.0	100.0	8.0	100.0
#4	12.0	100.0	12.0	100.0
#5	20.0	100.0	20.0	100.0

G.L. (%): Grade Limit.
% C.D.: Cumulative Distribution.

Given the foregoing discussion, GIPSA is proposing to revise the standards to reduce the grade limits on SHBN for grades U.S. No. 1 and U.S. No. 2 graded wheat.

Insect Damaged Kernels and Live Insects

GIPSA received one comment recommending that the grade limit for insect damaged kernels (IDK) be restricted from a maximum of 31 IDK in 100 grams of wheat to 5 IDK in 100 grams of wheat. IDK is a factor on which Sample Grade is determined. The limit of 32 or more IDK is the defect action level established by the U.S. Food and Drug Administration (FDA). GIPSA determines IDK in accordance with FDA guidelines under a memorandum of understanding that is currently in effect between USDA and FDA. A party to a commercial transaction can contractually specify a lower maximum allowable level of IDK if desired. Accordingly, GIPSA will not propose a revision to the IDK limit based on this comment.

The commenter suggested that GIPSA not permit any live insects in wheat, whereas the current wheat standards apply a tolerance. (To receive the special designation ''infested,'' a kilogram sample must contain two or more live weevils, two or more live insects injurious to stored grain or a combination of the two.)

Grain standards define kind, wholesomeness and cleanliness, while allowing market participants to impose more restrictive conditions on the grain in commerce, if desired. The current wheat standard appears to be appropriate for international commercial trade, which encompasses stakeholders who are primary users of the standards. Export sales contracts for wheat frequently specify ''zero live insects''. If live insects are found, GIPSA reports the finding; and if fumigation of the lot is ordered, GIPSA witnesses the fumigation. GIPSA believes that the market deals effectively through contract specifications with live insects, and accordingly, will not propose revising the wheat standards regarding the live insect tolerance.

Proposed Action

GIPSA is issuing this proposed rule to invite comments and suggestions from all interested persons on how GIPSA can further enhance the wheat standards

to better facilitate the marketing of wheat.

GIPSA proposes to revise § 810.2202(b)(4) to read: ''Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat in the class Soft White wheat.'' GIPSA also proposes to add a new sentence, § 810.2202(b)(5) to read: ''Durum wheat, Soft Red Winter wheat, and Unclassed wheat in the class Hard White wheat.''

GIPSA proposes to revise the table showing Grade and Grade Requirements for wheat in § 810.2204 to reduce the grading limits for shrunken and broken kernels to 2.0 and 4.0 percent for U.S. Nos. 1 and 2 graded wheat, respectively.

We invite comments, including data, views, and arguments for and against this proposed rule from all interested parties. Pursuant to section 4(b)(1) of the USGSA, as amended (7 U.S.C. 76(b)(1)), no standards established, or amendments or revocations of the standards, are to become effective less than 1 calendar year after promulgation unless, in the judgment of the Secretary of Agriculture, the public health, interest, or safety require that they become effective sooner.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget designated this rule as not significant for the purposes of Executive Order 12866.

GIPSA has determined that these proposed amendments would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The RFA requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

Under the USGSA, grain exported from the U.S. must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA and delegated states at 59 export elevators (including four floating elevators). All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. For North American Industry Classification System (NAICS) code 424510 ''grain and field bean merchant wholesalers'' the Small Business Administration size standard is 100 or fewer employees. Most users of the official inspection and weighing services, and these entities that perform these services, do not meet the regulations for small entities. In addition to GIPSA, there are 56 official agencies that perform official services under the USGSA, and most of these entities do not meet the requirements for small entities.

GIPSA is proposing to revise the wheat standards to change the definition of contrasting classes in hard white wheat. GIPSA's proposal also recommends amendments to the grade limits of shrunken and broken kernels. GIPSA believes that these proposed changes to the wheat standards would facilitate the marketing of wheat.

The U.S. wheat industry, including approximately 159,527 wheat farms (USDA–2007 Census of Agriculture-updated), handlers, processors, and merchandisers are the primary users of the wheat standards and utilize the official standards as a common trading language to market wheat. The USGSA (7 U.S.C. 87f–1) requires that all persons engaged in the business of buying grain for sale in foreign commerce be registered with USDA. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year.

At present, there are 138 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year 2009 totaled approximately 21,096,894 metric tons. While most of the 138 registrants are large businesses, some entities may be small. GIPSA believes that this proposed rule would not adversely affect or burden these users, nor add any additional cost for entities of any size.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This proposed rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), the existing information collection requirements are approved under the Office of Management and Budget (OMB) Number 0580–0013. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 810

Exports, grain.

For reasons set out in the preamble, GIPSA proposes to amend 7 CFR part 810 as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for part 810 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

2. Amend § 810.2202 by revising paragraph (b) to read as follows:

§ 810.2202 Definition of other terms.

* * * * *

(b) *Contrasting Classes.* Contrasting classes are:

(1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat in the class Soft White wheat.

(5) Durum wheat, Soft Red Winter wheat, and Unclassed wheat in the class Hard White wheat.

* * * * *

3. Amend § 810.2204 by revising paragraph (a) to read as follows:

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

GRADES AND GRADE REQUIREMENTS

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of					
Defects:					
Damaged kernels					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	2.0	4.0	8.0	12.0	20.0
Total [1]	3.0	5.0	8.0	12.0	20.0
Wheat of other classes [2]	1.0	2.0	3.0	10.0	10.0
Contrasting classes	3.0	5.0	10.0	10.0	10.0
Total [3]	0.1	0.1	0.1	0.1	0.1
Stones					
Maximum count limits of					
Other material in one kilogram:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substances	3	3	3	3	3
Total [4]	4	4	4	4	4
Insect-damaged kernels in 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
(b) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor) or
(c) Is heating or of distinctly low quality.

[1] Includes damaged kernels (total), foreign material, shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, or unknown foreign substance.

* * * * *

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–8663 Filed 4–10–12; 8:45 am]

BILLING CODE 3410–KD–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0253; FRL–9658–6]

Approval and Promulgation of Air Quality Implementation Plan for 1997 8-Hour Ozone Standard; Arizona

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona state implementation plan (SIP) that demonstrate attainment of the 1997 8-hour ozone national ambient air quality standards in the Phoenix-Mesa nonattainment area by June 15, 2009. These SIP revisions are the 2007 Ozone Plan developed by the Maricopa Association of Governments and adopted and submitted to EPA by the Arizona Department of Environmental Quality on June 13, 2007. EPA is proposing to approve the 2007 Ozone Plan based on our determination that the plan contains all the provisions required for areas classified as nonattainment under Part D, Subpart 1 of the Clean Air Act, including the demonstration of reasonably available control measures (RACM), reasonable further progress (RFP), emission inventories, transportation conformity motor vehicle emission budgets for 2008, and contingency measures to be

implemented if the Phoenix-Mesa nonattainment area fails to attain by June 15, 2009.

DATES: Written comments must be received on or before May 11, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0253, by one of the following methods:

- *Federal e-Rulemaking Portal:* www.regulations.gov. Follow the on-line instructions.
- *Email: lee.anita@epa.gov*.
- *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov.*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email. The www.regulations.gov Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the www.regulations.gov Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some documents may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below. Copies of the SIP materials are also available for inspection at the following location:

- Arizona Department of Environmental Quality, 1110 W. Washington Street, First Floor, Phoenix, AZ 85007, Phone: (602) 771–2217.

The SIP materials are also electronically available at: *http://www.azmag.gov/Projects/Project.asp?CMSID2=1120*.

FOR FURTHER INFORMATION CONTACT: Anita Lee, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3958, *lee.anita@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

Throughout this document, ''we'', ''us'' and ''our'' refer to EPA.

I. The 1997 8-Hour Ozone Standard and the Phoenix-Mesa Ozone Nonattainment Area

A. Background on the 1997 8-Hour Ozone NAAQS

Ground-level ozone pollution is formed in the atmosphere from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases exposure. See ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone'', January 6, 2010 and 75 FR 2938 (January 19, 2010).

On July 18, 1997, EPA revised the primary and secondary national ambient air quality standards (NAAQS or standard) for ozone to replace the existing 1-hour ozone standard of 0.12 parts per million (ppm) with an 8-hour standard of 0.08 ppm [1] (62 FR 33856). EPA revised the ozone standard after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to ozone concentrations above the levels of these revised standards.

B. The Phoenix-Mesa 8-Hour Ozone Nonattainment Area

Following promulgation of a new or revised NAAQS, EPA is required by Clean Air Act (CAA) section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. Under the implementation rule for the 1997 8-hour ozone standard, EPA designated certain areas as nonattainment under title I, part D, subpart 1 of the CAA (subpart 1) if the area's 1-hour ozone design value was above the level of the standard but below 0.121 ppm. On April 15, 2004, EPA designated Phoenix-Mesa as ''Subpart 1'' nonattainment for the 1997 8-hour ozone standard under CAA section 172. See 69 FR 23858 (April 30, 2004) and 40 CFR 81.303. The designation became effective on June 15, 2004. Under part D, subpart 1 of the Act, states must submit plans to come into attainment within 3 years of the effective date of the nonattainment designation, and must attain the standard as expeditiously as practicable, but no later than 5 years after the effective date of the designation. Arizona Department of Environmental Quality (ADEQ) submitted the 2007 Attainment Plan to EPA on June 13,

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and further tightened the standards by lowering the level for both to 0.075 ppm (73 FR 16436, Mar. 27, 2008).

2007 [2] to attain the 1997 8-hour ozone standard by the attainment date of June 15, 2009, which is 5 years after the effective date of the area's designation as nonattainment.[3]

In June 2007, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated the portion of the 2004 ozone implementation rule that allowed areas to be classified under subpart 1. See *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F. 3d 882 (D.C. Cir. 2006), reh'g denied 489 F.3d 1245 (SCAQMD) (vacating certain elements of EPA's Phase 1 ozone implementation rule). On January 16, 2009 (74 FR 2936), EPA published a proposed rule to address, among other issues, the DC Circuit Court vacatur of the classification system that EPA used to designate a subset of initial 1997 8-hour ozone nonattainment areas under subpart 1. In that rulemaking, EPA proposed that all areas designated nonattainment for the 1997 8-hour ozone NAAQS under subpart 1 would be classified as subpart 2 areas (hereafter referred to as the Subpart 1/Subpart 2 Rulemaking). The Phoenix-Mesa area is included in the areas that would be classified under subpart 2 if EPA's proposal is finalized. EPA has not yet taken final action on the Subpart 1/Subpart 2 Rulemaking. Following completion of the Subpart 1/Subpart 2 Rulemaking, EPA will address in a future rulemaking any additional requirements that become applicable to Phoenix-Mesa, if any, as a result of its classification under subpart 2. If, after Phoenix-Mesa is classified under subpart 2, EPA determines in a future rulemaking that the area is in attainment with the 1997 8-hour ozone standard, then the obligation to submit certain planning SIPs related to attainment of the 1997 8-hour ozone standard pursuant to its subpart 2 classification would be suspended in accordance with 40 CFR 51.918.

The Phoenix-Mesa nonattainment area is located in the central portion of Arizona and encompasses 4,880 square miles, including the urban portions of Maricopa and Pinal Counties, the Fort McDowell Yavapai Nation and the Salt River-Pima Maricopa Indian Community. For a precise description of the geographic boundaries of the Phoenix-Mesa nonattainment area, see 40 CFR 81.303. The Maricopa Association of Governments (MAG) is the agency with primary responsibility for developing the plan to attain the 1997 8-hour ozone standard for Phoenix-Mesa.

Ambient 8-hour ozone concentrations in Phoenix-Mesa vary depending on location and season, with the highest values generally occurring in May–September, in north Phoenix or the air quality monitors located in the mountainous northeastern region of the Phoenix-Mesa nonattainment area. Ozone design values [4] from Phoenix-Mesa that exceeded the 1997 8-hour standard of 0.08 parts per million [5] (ppm) ranged from 0.085 ppm (for the 2000–2002, 2001–2003, and 2003–2005 periods) to 0.088 ppm (for the 1998–2000 and 1999–2001 periods). The ozone design values for the Phoenix-Mesa nonattainment area for the 2004–2006 period (highest design value was 0.083 ppm) and years thereafter were at or below the standard. See EPA Air Quality System (AQS) data available in the docket for this proposed rulemaking and Table 3 below.

II. CAA and Regulatory Requirements for 1997 8-Hour Ozone Nonattainment Area SIPs

Each area designated nonattainment for the 1997 8-hour ozone standard is subject to, at minimum, the general requirements for nonattainment area plans in subpart 1 of part D, title I of the CAA. Subpart 2 of part D contains more detailed requirements for ozone nonattainment areas classified under this subpart. The Phoenix-Mesa ozone nonattainment area is not currently classified under subpart 2.[6] EPA has proposed to classify the Phoenix-Mesa area under subpart 2 as ''marginal'' nonattainment for the 1997 8-hour ozone NAAQS (see 74 FR 2936 at 2944, January 16, 2009) but has not yet completed this rulemaking. Although a future final decision by EPA to classify the Phoenix-Mesa area under subpart 2 may trigger additional future requirements for the area, EPA believes that this does not prevent EPA from proposing or ultimately finalizing our action on the 2007 Ozone Plan in accordance with the subpart 1 requirements that currently apply to the area.[7] Thus, for purposes of evaluating the 2007 Ozone Plan, we are reviewing it for consistency with the applicable requirements of part D, title I of the Act, which are contained in sections 172(c)(1)–(9).[8]

In order to assist states in developing effective plans to attain the ozone standard, EPA issued the 8-hour ozone implementation rule. This rule was finalized in two phases. The first phase of the rule addresses classifications for the 1997 8-hour ozone standard, applicable attainment dates for the various classifications, and the timing of emissions reductions needed for attainment. See 69 FR 23951 (April 30, 2004). The second phase addresses SIP submittal dates and the requirements for reasonably available control technology and measures (RACT and RACM), reasonable further progress (RFP) demonstration, modeling and attainment demonstrations, contingency measures, and new source review. See 70 FR 71612 (November 29, 2005). The rule is codified at 40 CFR part 51, subpart X.[9] We discuss each of the applicable CAA and regulatory requirements for 8-hour ozone nonattainment plans in more detail below.

III. Arizona's State Implementation Plan Submittal To Address Ozone Attainment in the Phoenix-Mesa Nonattainment Area

A. Arizona's SIP Submittal

On June 13, 2007, the Arizona Department of Environmental Quality (ADEQ) submitted the ''Eight-Hour

[2] Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality to Wayne Nastri, Regional Administrator, U.S. Environmental Protection Agency, Region IX, dated June 13, 2007, plus three enclosures, including the ''Eight-Hour Ozone Plan for the Maricopa Nonattainment Area, dated June 2007'' and Appendices Volumes one and two, dated June 2007.

[3] On March 23, 2009, ADEQ submitted to EPA a redesignation request and maintenance plan for Phoenix-Mesa for the 1997 8-hour ozone standard based on ambient ozone monitoring data for the 2006–2008 period. EPA has not yet acted on this submittal. The maintenance plan and redesignation request are available from the Maricopa Association of Governments at: *http://www.azmag.gov/Projects/Project.asp?CMSID2=1120&MID=Environmental%20Programs.*

[4] A design value is an ambient concentration calculated using a specific methodology to evaluate monitored air quality data and is used to determine whether an area's air quality meets a NAAQS. The methodology for calculating design values for the 8-hour ozone NAAQS is found in 40 CFR part 50, Appendix I.

[5] Based on the rounding conventions described in 40 CFR part 50, Appendix I, a design value of 0.085 ppm is the lowest value that exceeds the 1997 8-hour ozone NAAQS of 0.08 ppm.

[6] EPA now refers to these areas as ''former subpart 1'' nonattainment areas in light of the SCAQMD decision.

[7] EPA is currently obligated under the terms of a Consent Decree to take final action on the 2007 Ozone Plan by May 31, 2012. See *WildEarth Guardians* v. *Jackson,* Case No. 4:11–cv–02205–SI (N.D. CA).

[8] Although the DC Circuit Court in *SCAQMD* rejected EPA's rationale for implementing the 1997 8-hour ozone standard in certain nonattainment areas solely under subpart 1, EPA does not believe that the Court's ruling in this case alters any subpart 1 requirements that currently apply to the 2007 Ozone Plan.

[9] EPA has revised or proposed to revise several elements of the 8-hour ozone implementation rule since its initial promulgation in 2004. See, *e.g.,* 74 FR 2936 (January 16, 2009); 75 FR 51960 (August 24, 2010); and 75 FR 80420 (December 22, 2010). None of these revisions affect any provision of the rule that is applicable to our proposed action today on the Phoenix-Mesa 2007 8-hour Ozone SIP.

Ozone Plan for the Maricopa Nonattainment Area'' (2007 Ozone Plan) to EPA as a revision to the Arizona SIP. The plan was deemed complete by operation of law on December 13, 2007. MAG developed the 2007 Ozone Plan and the MAG Regional Council Executive Committee adopted the plan on June 11, 2007. ADEQ adopted the plan on June 13, 2007.[10] The 2007 Ozone Plan contains complete emission inventories for ozone precursors for 2002 and 2008, photochemical modeling to demonstrate that the standard will be attained in 2008 through the continued implementation of federal, state, and local control measures, motor vehicle emission budgets (MVEBs) used for transportation conformity, and descriptions of the State's compliance with CAA requirements for ''Subpart 1'' ozone nonattainment areas. We are proposing to approve the 2007 Ozone Plan for the Phoenix-Mesa nonattainment area.

B. CAA Procedural and Administrative Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

MAG has satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2007 Ozone Plan. MAG and ADEQ jointly held two public hearings on June 1, 2007 and June 4, 2007. As evidence of notification of public hearings consistent with 40 CFR 51.102, the SIP submittal includes proof of newspaper publication and copies of letters sent to EPA and affected federal, state, and local agencies notifying interested parties of the joint MAG and ADEQ public hearings. We find, therefore, that the 2007 Ozone Plan submittal meets the procedural requirements for public notice and hearing in sections 110(a) and 110(l) of the CAA.

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan submittal that EPA has not affirmatively determined to be complete or incomplete will be deemed complete by operation of law six months after the date of submittal. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The 2007 Ozone Plan, submitted by ADEQ on June 13, 2007, was deemed complete by operation of law on December 13, 2007.

IV. Review of the 2007 Ozone Plan for Phoenix-Mesa

EPA evaluated the 2007 Ozone Plan according to the general subpart 1 nonattainment plan requirements contained in section 172(c) of the Act.

A. Emission Inventories

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires each state with an ozone nonattainment area to submit plan provisions that include a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met''. EPA has issued the ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (EI Guidance),[11] which provides guidance on how to develop base year and future year baseline emission inventories for 8-hour ozone, $PM_{2.5}$, and regional haze SIPs. For areas designated nonattainment for the 8-hour ozone standard in 2004, EPA recommends using calendar year 2002 as the base year for the inventory. EI Guidance, p. 8.

Emissions inventories for ozone should include emissions of VOC, NO_X and carbon monoxide (CO) and represent an average summer week day during the ozone season. See EI Guidance, pp. 14 and 17. States should include documentation in their submittals explaining how the emissions data were calculated. See 70 FR 71612 (Nov. 29, 2005) and EI Guidance p. 40. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time the SIP is developed. *See* 68 FR 32802 (June 2, 2003) and 70 FR 71612 (Nov. 29, 2005).

2. Emission Inventories in the 2007 8-Hour Ozone Plan

The base year and future year baseline inventories for NO_X, CO and VOC for the Phoenix-Mesa nonattainment area, together with additional documentation for the inventories, are found in Volume 1 of the Appendices to the 2007 Ozone Plan.[12] These inventories represent average summer day (ozone season) emissions. A base year inventory is provided for 2002 and the projected baseline inventory is provided for the attainment year of 2008.[13] All inventories include NO_X, CO, and VOC emissions from point, area, nonroad mobile, and onroad mobile sources, except that biogenic emission inventories include only NO_X and VOC emissions.

The 2002 Periodic Emission Inventory (PEI) emissions estimates for Maricopa County and the Phoenix-Mesa nonattainment area, which provided the basis for the 2002 base year inventory, were calculated in terms of annual emissions and ozone season-day emissions. Emissions from point sources were estimated from each identified facility through permit system databases and annual emission reports submitted to the facility's permitting authority. Emissions from area sources were estimated by source category using information from permit databases and previous SIP inventories. Nonroad mobile source emissions were estimated with the EPA NONROAD 2002 model and onroad mobile source emissions were estimated from emission factors for various vehicle classes from MOBILE6.2 combined with estimates of vehicle miles traveled (VMT) using data submitted by the Arizona Department of Transportation to the U.S. Department of Transportation's Federal Highway Administration for the 2002 Highway Performance and Monitoring System. Biogenic emissions of NO_X and VOC were calculated using MAGBEIS2, a modified version of the UAM–BEIS2 model developed specifically for use in Maricopa County, based on land use

[10] Letter from Stephen A. Owens, Director of Arizona Department of Environmental Quality, to Wayne Nastri, Regional Administrator, U.S. Environmental Protection Agency, Region IX, ''Submittal of the Eight-Hour Ozone Plan for the Maricopa County Nonattainment Area''. June 13, 2007.

[11] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'', EPA–454/R–05–001, November 2005. This document is available at: *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*.

[12] By ''future year baseline inventories'' or ''projected baseline inventories'', we mean projected emission inventories for future years that account for, among other things, the ongoing effects of economic growth and adopted emission control requirements.

[13] EPA's ozone implementation rule defines ''attainment year ozone season'' as ''the ozone season immediately preceding a nonattainment area's attainment date.'' 40 CFR 51.900(g). Because the attainment date for Phoenix-Mesa is June 15, 2009, we refer to 2008 as the attainment year, and the 2008 ozone season as the ''attainment year ozone season.''

information, surface temperature data, and emission factors for land use categories. See 2002 Periodic Emissions Inventory for Ozone Precursors, June 2004 in Volume 1 of the Appendices to the 2007 Ozone Plan.

Ozone precursor emissions from point, area, onroad, and nonroad sources used in the modeling domain (Table 1) were developed from the Comprehensive Air Quality Model with Extensions (CAMx), version 4.40, and the Emissions Preprocessor System (EPS3.0), based on the 2002 Periodic Emission Inventory for the three ozone episodes modeled for 2002. Biogenic VOC emission estimates used for the 2002 modeling domain (*e.g.,* 451.3 metric tons per day in the June 2002 ozone episode) are significantly higher than biogenic VOC emissions estimated in the 2002 PEI (*e.g.,* 41.7 metric tons per ozone season day). Section III of Appendix A, Exhibit 2 of the 2007 Ozone Plan describes the method used to estimate biogenic emissions for the modeling domain. MAG used a model developed in 2005, called Model of Emissions of Gases and Aerosols from Nature (MEGAN), that was determined to be more reliable and accurate for Maricopa County because it relies on local field studies that identified dominant plant species and emission factors, as well as locations and biomass densities, to estimate biogenic emissions of ozone precursors. In the 2002 base year inventory, biogenic sources contributed 65 percent to total VOC emissions. In contrast, anthropogenic onroad mobile sources dominated the total NO_X emissions and accounted for 63 percent of total NO_X. *See* Tables 5–3 and 5–4 of the 2007 Ozone Plan.

The 2002 inventory was projected to 2008 by accounting for expected growth factors, ongoing control programs, and retirement rates for obsolete sources of emissions. MAG accounted for known projects in 2008 (*e.g.,* the Phoenix Expansion Project of the Transwestern Pipeline Company) and additionally applied a five percent increase to onroad mobile source emissions of NO_X and a three percent increase to all other anthropogenic emissions of VOC and NO_X. The three percent increase was based on population projections prepared by the Arizona Department of Economic Security, based on a 2005 special census in Maricopa County. MAG applied the five percent increase to onroad mobile source emissions of NO_X to create a safety margin for transportation conformity. See 2007 Ozone Plan, p. 5–5, and Appendices to Ozone Plan, Volume 1.

For biogenic emissions, the 2002 inventory was held constant for 2008. In additional information provided to EPA, MAG explained that no projected land use or land cover data was available for the 2008 attainment year, therefore biogenic emissions in the ozone modeling domain were held constant.[14] In the approved 1-hour ozone maintenance plan, MAG projected an increase in VOC emissions from the Phoenix Metropolitan nonattainment area due to changes in land use, i.e., increasing urbanization and residential land use and decreasing use of land for agriculture. See 70 FR 13425 (Mar. 21, 2005). The 1-hour ozone maintenance plan relied on MAGBEIS2 to estimate biogenic emissions from the nonattainment area and modeling domain.[15] As shown in the additional information provided by MAG on February 8, 2012, the MAGBEIS2 VOC emission factor for urbanized land use is greater than the VOC emission factor for agricultural land use, therefore, based on the projected increased urbanization in the 1-hour ozone nonattainment area, VOC emissions projected by MAGBEIS2 increased from the 1999 base year to the 2015 maintenance year. In contrast, as described above, the 2007 8-hour ozone plan relied on a new biogenic emissions model (MEGAN) that is more representative of Maricopa County and its desert environment. The additional information provided by MAG shows the urbanized land use emission factors from MEGAN are lower than emission factors associated with agriculture or other undeveloped desert landscapes in Maricopa County. Therefore, using MEGAN, MAG expects that the trend of increasing urbanization (as projected in the 1-hour ozone maintenance plan) is expected to decrease VOC emissions from Maricopa County. Because MAG did not have 2008 land use data available, it determined that maintaining constant biogenic emissions of the ozone precursors would be more conservative than attempting to estimate the anticipated decrease in biogenic VOC emissions.[16]

TABLE 1—EMISSION INVENTORIES FOR THE PHOENIX-MESA MODELING DOMAIN FOR JUNE OZONE EPISODE

[Metric tons per day]

	NO_X		VOC	
	2002	2008	2002	2008
Point	11.15	32.78	11.72	13.55
Area	9.79	13.49	90.56	105.03
Nonroad Mobile	79.97	86.58	50.73	57.55
Onroad Mobile	182.36	145.52	91.84	72.34
Biogenics	8.56	8.56	451.28	451.28
Total	291.82	286.93	696.13	699.75

Source: 2007 Ozone Plan at Tables 5–3 and 5–4.

3. Proposed Action on the Emission Inventories

We have reviewed the 2002 base year inventory and the inventory methodologies used in the 2007 Ozone Plan and believe that the inventory was developed consistent with the CAA requirements as reflected in the 8-hour ozone implementation rule and EPA's guidance. The 2002 base year inventory is a comprehensive inventory of actual emissions of ozone precursors in the Phoenix-Mesa nonattainment area. We therefore propose to approve the base year inventory as meeting the requirements of CAA section 172(c)(3) and EPA's 8-hour ozone implementation rule.

[14] Email from Cathy Arthur, MAG, to Anita Lee, EPA, re: ''Biogenic VOCs'' on February 8, 2012, plus two attachments on land use boundaries and emission factors.

[15] *Ibid.*

[16] *Ibid.*

B. Reasonably Available Control Measures Demonstration and Control Strategy

1. Requirements for RACM and Control Strategies

CAA Section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonable available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' The 8-hour ozone implementation rule requires that for each nonattainment area that is required to submit an attainment demonstration, the state must also submit concurrently a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. 40 CFR 51.912(d).

EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 [17] and in a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas'', John Seitz, Director, OAQPS to Regional Air Directors, November 30, 1999 (Seitz memo). In summary, EPA guidance provides that, to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more. See Seitz memo and General Preamble at 13560.[18] Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area.

CAA section 172(c)(6) requires nonattainment plans to ''include enforceable emission limitation, and such other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and actions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date * * *.'' *See* also CAA section 110(a)(2)(A). The ozone implementation rule requires that all control measures needed for attainment be implemented no later than the beginning of the attainment year ozone season. *See* 40 CFR 51.908(d). The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's attainment date. *See* 40 CFR 51.900(g).

2. RACM Demonstration and the Control Strategy in the 2007 Ozone Plan

The attainment demonstration for the Phoenix-Mesa nonattainment area, which we discuss further in section IV.D of this document, shows that implementation of all of the measures identified as RACM for the 1997 8-hour ozone NAAQS would enable the Phoenix-Mesa area to attain the 1997 8-hour ozone standard during the 2008 ozone season, preceding the 2009 attainment date for the area. EPA previously approved all of the key NO_X and VOC control measures, including several dozen VOC RACT rules, as part of Arizona's plans for attaining and maintaining the 1-hour ozone standard in Phoenix-Mesa.[19] The 2007 Ozone Plan specifically relies on seven of these control measures to demonstrate attainment of the 1997 8-hour ozone standard by June 15, 2009, and provides for implementation of these measures by the beginning of the attainment year ozone season (January 2008), consistent with the requirements of 40 CFR 51.908(d). See 2007 Ozone Plan at pp. 4–2 through 4–7.[20] We discuss below the seven measures that the attainment demonstration in the 2007 Ozone Plan relied on to reduce emissions of VOC and/or NO_X (*see* Table 2). Emission reductions associated with each measure were estimated for the June 2008 ozone episode modeled for the attainment demonstration. Of these seven measures, phased-in emission test cutpoints and the development of intelligent transportation systems resulted in the greatest reduction in VOC emissions, and the summer fuel reformulation resulted in the greatest reduction in NO_X emissions.

TABLE 2—2008 EMISSION REDUCTIONS FROM ''ATTAINMENT MEASURES''

	VOC		NO_X	
	Metric ton/day reduction	% Change compared to 2008 base case	Metric ton/day reduction	% Change compared to 2008 base case
Summer Fuel Reformulation	[1] (0.1)	[1] <0.1	10.3	3.5
Phased-in Emission Test Cutpoints	3.1	1.2	2.6	0.9
One Time Waiver from Vehicle Emissions Test	0.1	<0.1	<0.1	<0.1
Coordinate Traffic Signal Systems	<0.1	<0.1	<0.1	<0.1
Develop Intelligent Transportation Systems	2.2	0.9	0.4	0.1
Tougher Enforcement of Vehicle Registration and Emission Test Compliance	0.2	<0.1	0.1	<0.1

[17] The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'', published at 57 FR 13498 on April 16, 1992, describes EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standard. EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standard under title I.

[18] See also ''State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas'', 44 FR 20372 (April 4, 1979), and Memorandum dated December 14, 2000 from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs''.

[19] *See, e.g.,* 2007 Ozone Plan at Table 1–1; 68 FR 2912 (January 22, 2003); 69 FR 10161 (March 4, 2004); 70 FR 30370 (May 26, 2005); 70 FR 13425 (March 21, 2005) (proposed redesignation of Phoenix to attainment for the 1-hour standard) and 70 FR 34362 (June 14, 2005) (final redesignation). RACT rules for NO_X were not required for purposes of attaining and maintaining the 1-hour ozone NAAQS in Phoenix-Mesa because EPA approved a petition for NO_X exemption for this purpose. 60 FR 19510 (April 19, 1995).

[20] The 2007 Ozone Plan refers to these seven control measures as ''attainment measures,'' to be distinguished from ''baseline measures,'' which were taken into account in the base year and projection year emission inventories. See 2007 Ozone Plan at 4–2 and Volume 1 of the Appendices to the 2007 Ozone Plan at Table III–1.

TABLE 2—2008 EMISSION REDUCTIONS FROM ''ATTAINMENT MEASURES''—Continued

	VOC		NO_X	
	Metric ton/day reduction	% Change compared to 2008 base case	Metric ton/day reduction	% Change compared to 2008 base case
Rule 358: Polystyrene Foam Operations	0.5	0.2	N/A	N/A
Total	6.0	2.4	13.4	4.6

Source: 2007 Ozone Plan at Table 5–2.
[1] Increase.

a. Summer Fuel Reformulation

The 2007 Ozone Plan relies on H.B. 2307, a Cleaner Burning Gasoline (CBG) program passed by the Arizona Legislature in 1997. The CBG program contains requirements related to seasonal changes in gasoline formulation related to vapor pressure and oxygen content. Typically, fuel reformulation measures are designed to reduce summertime evaporative VOC emissions. However, the results of MAG's emissions modeling analyses suggest that the summer reformulation measure would increase VOC emissions slightly and significantly reduce emissions of NO_X. In Volume 2 of the Appendices to the 2007 Ozone Plan, in response to EPA comments, MAG explains that the slight increase in projected VOC emissions from the summer fuel reformulation measure occurred because the MOBILE6.2 input for the measure specified a Reid vapor pressure (RVP) of 7.0 pounds per square inch (psi). Actual fuel specifications for the 2002 base case used actual fuel specifications from the Arizona Department of Weights and Measures that were lower than 7.0 psi. The projected decrease in NO_X emissions in 2008 from the summer fuel reformulation measure is a result of the removal of the summertime (April 1 through November 1) minimum oxygen content standard for Type 1 gasoline. Oxygenates in fuel are used to improve combustion as a control strategy for CO and other products of incomplete combustion, for example unburned VOCs; however improved combustion also tends to increase formation of NO_X. Therefore, removal of the minimum summertime oxygenate standard is projected to reduce formation of NO_X. *See* 2007 Ozone Plan at 4–2, 4–3.

b. Phased-in Emission Test Cutpoints

The 2007 Ozone Plan describes two measures passed by the Arizona Legislature that comprise this attainment measure: H.B. 2237, passed in 1997, that appropriates funds from the State General Fund to develop and implement an alternative test protocol to reduce false failure rates associated with the more stringent standards for the Vehicle Emissions Testing Program, and S.B. 1427, which requires vehicles in certain areas to be emission tested and requires owners of the newest five model year vehicles to be exempt from testing but to pay an in lieu fee that is deposited into the Arizona Clean Air Fund, effective December 31, 1998. Using MOBILE6.2, MAG estimated that this measure reduces NO_X emissions by 2.6 metric tons per day in the June 2008 ozone episode and VOC emissions by 3.1 metric tons per day. *See* 2007 Ozone Plan at 4–3, 4–4.

c. One Time Waiver From Vehicle Emissions Test

The Arizona Legislature passed S.B. 1002 which limits issuance of a waiver for failure to comply with emission testing requirements to one-time only, effective January 1, 1997. MAG modeled this measure in MOBILE6.2 by adjusting the percentage of waivers allowed and estimated that this measure reduces NO_X emissions by less than 0.1 metric tons per day in the June 2008 ozone episode and VOC emissions by 0.1 metric tons per day. See 2007 Ozone Plan at 4–4.

d. Coordinate Traffic Signal Systems

House Bill 2237 passed by the Arizona Legislature contains appropriations for fiscal years 1997–1998 and 1998–1999 to Arizona Department of Transportation for distribution to cities and counties for synchronization of traffic signals within and across jurisdictional boundaries. MAG modeled this measure in MOBILE6.2 by adjusting the input for idling time at traffic signals and estimated that this measure reduces NO_X emissions by less than 0.1 metric tons per day in the June 2008 ozone episode and VOC emissions by less than 0.1 metric tons per day. See 2007 Ozone Plan at 4–4, 4–5.

e. Develop Intelligent Transportation Systems

The 2007 Ozone Plan cites three committed control measures in the 1-hour Ozone Maintenance Plan that serve to reduce traffic congestion: ''Coordinate Traffic Signal Systems'', ''Develop Intelligent Transportation Systems'', and ''Reduce Traffic Congestion at Major Intersections''. The 2007 Ozone Plan describes these measures as technologies implemented on the local level over fiscal years 2003–2006 that reduce VOC and NO_X emissions by reducing congestion. MAG estimated emission reductions from these measures to be 0.4 metric tons of NO_X per day in the June 2008 ozone episode and 2.2 metric tons of VOC per day. See 2007 Ozone Plan at 4–5.

f. Tougher Enforcement of Vehicle Registration and Emission Test Compliance

The 2007 Ozone Plan cites two measures from the Arizona Legislature and a program implemented by the Arizona Motor Vehicle Division of the Arizona Department of Transportation that collectively improve enforcement of vehicle registration and compliance with vehicle testing requirements: S.B. 1427 passed in 1998 that requires school and special districts in certain areas to prohibit employees who have not complied with emission testing requirements from parking in employee parking lots, and H.B. 2254 passed in 1999 that requires vehicles owned by federal, state, or political state subdivisions in Arizona to comply with A.R.S 49–542. MAG modeled this measure in MOBILE6.2 by adjusting the weighting between inspection and maintenance (I/M) and non-I/M emission factors, and estimated that this measure reduces NO_X emissions by 0.1 metric tons per day in the June 2008 ozone episode and VOC emissions by 0.2 metric tons per day. See 2007 Ozone Plan at 4–5, 4–6.

g. Maricopa County Rule 358: Polystyrene Foam Operations

Rule 358 adopted by Maricopa County on April 20, 2005 limits VOC emissions from the manufacturing of expanded-polystyrene products. MAG relied on information provided by the Maricopa County Air Quality Department that Rule 358 would result in 80 percent control effectiveness and 80 percent rule effectiveness. MAG estimated VOC emission reductions to be 0.5 metric tons per day in the June 2008 ozone episode, with no effect on emissions of NO_X. See 2007 Ozone Plan at 4–6, 4–7.

3. Proposed Actions on the RACM Demonstration and Control Strategy

Based on our review of the RACM analysis and Arizona's adopted rules, we propose to find that the 2007 Ozone Plan provides for implementation of all reasonably available control measures necessary to demonstrate expeditious attainment of the 1997 8-hour ozone standard and to meet any related RFP requirements in the Phoenix-Mesa nonattainment area, consistent with the applicable requirements of CAA section 172(c)(1) and 40 CFR 51.912.

C. Attainment Demonstration

1. Requirements for Attainment Demonstration

CAA section 172(c)(1) requires states with ozone nonattainment areas to submit plan provisions that provide for attainment of the national ambient air quality standards. See also 40 CFR 51.908. The attainment demonstration should include:

a. Technical analyses to locate and identify sources of emissions that are causing violations of the 8-hour ozone NAAQS within the nonattainment area;

b. Adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment; and

c. Contingency measures required under section 172(c)(9) of the CAA.

See 70 FR 71612 (Nov. 29, 2005).

The requirements for the first two items are described in the sections on emission inventories and RACM/RACT above (sections IV.A and IV.B) and in the sections on air quality modeling and attainment demonstration that follow immediately below. Requirements for the third item are described in the section on contingency measures (IV.F.).

2. Air Quality Modeling in the Phoenix-Mesa 2007 Ozone Plan

Under EPA's ozone implementation rule, an attainment demonstration must meet the air quality modeling and other requirements of 40 CFR 51.112 and must be supported ''by means of a photochemical grid model or any other analytical method determined by [EPA] to be at least as effective.'' *See* 40 CFR 51.908. Air quality modeling is used to establish attainment emissions targets, that is, a combination of ozone precursor emission levels that the area can accommodate without exceeding the NAAQS, and to assess whether the proposed control strategy will result in attainment of the NAAQS.

Air quality modeling is performed for a base year and compared to air quality monitoring data from that year in order to evaluate model performance. Once the performance is determined to be acceptable, future year changes to the emissions inventory are simulated with the model to determine the effect of emissions reductions on ambient air quality. The procedures for modeling ozone as part of an attainment demonstration are contained in EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze'' (Guidance). The Guidance also recommends that supplemental analyses be performed, and used in combination with the modeling in a Weight of Evidence determination that the control strategy will result in attainment of the NAAQS. See Guidance p. 17.

The air quality modeling is described in Chapter 3 of the 2007 Ozone Plan and documented in Volume One of the Appendices to the 2007 Ozone Plan, in Appendix A, Exhibit 2 (''Modeling TSD''). We provide a brief description of the modeling and a summary of our evaluation of it below.

MAG performed the air quality modeling for the 2007 Ozone Plan using the Comprehensive Air Quality Model with Extensions (CAMx) photochemical model, incorporating meteorological fields from the Mesoscale Model version 5 (MM5). These models have been extensively used in developing SIP attainment demonstrations and are identified in EPA Guidance as candidate models. See Guidance pp. 139 & 160. While there was no intensive field study for this modeling effort, 31 ozone stations and 56 meteorological stations provided an ample database of routinely collected data for use in model application development and performance evaluation.

EPA recommends that States prepare modeling protocols as part of their modeled attainment demonstrations. Guidance, p. 133. The Guidance at pp. 133–134 describes the topics to be addressed in this modeling protocol. A modeling protocol should detail the procedures for conducting the modeling analysis, such as the background and objectives, the schedule and organizational structure, selection of ozone episodes to model, meteorological and emissions input data preparation, model performance evaluation, interpreting modeling results, and procedures for using the model to demonstrate whether proposed strategies are sufficient to attain the NAAQS. The 2007 Ozone Plan's modeling protocol is contained in Volume Two of the Appendices to the 2007 Plan, in Appendix I-i, and covers all of the topics recommended in the Guidance.

A key part of the modeling protocol is the selection of ozone episodes to be modeled. An attainment demonstration that is robust despite natural variability should include modeling of multiple days with high ozone concentrations, spanning the range of meteorological conditions that lead to exceedances of the NAAQS in the area. See Guidance p. 146. Volume two of the Appendices to the 2007 Ozone Plan, Attachment II, has a thorough description of the episode selection process. A climatology of high ozone days for 1987–2004 was prepared, considering synoptic meteorological conditions, temperature, wind speed, wind direction, and frequency of high ozone by month, day of week, and hour of day. For the more recent 2000–2004 period, ozone spatial patterns were examined, and back trajectories prepared to help assess whether ozone was locally generated or partly due to transport from outside the domain. High temperature occurred on summer days whether they exceeded the standard or not, and so was not useful in selecting episodes. Typical features of episodes are high ozone concentrations northeast of central Phoenix and winds from the east in the morning, shifting to south at midday, and then southwesterly in the afternoon. Based on the analysis, MAG identified three meteorological regimes leading to high ozone concentrations, and six candidate recent ozone episodes. On the basis of ozone episode severity and duration, MAG chose three of the episodes for modeling. Regime 1 is characterized by stagnant winds and purely local generation of ozone; it includes some weekend exceedances. It is represented by the July 8–14, 2002 episode with a maximum ozone concentration of 107 ppb at Maryvale, and eight other exceeding sites; this was the episode with the highest ozone concentration during the 2000–2004 period. Regime 2 is characterized by light winds, with potential for transport

from the south and southwest. It is represented by the June 3–7, 2002 episode with a maximum ozone concentration of 92 ppb at Fountain Hills, and eleven other exceeding sites. Regime 3 is characterized by a non-calm winds from other directions. It is represented by the August 5–11, 2001 episode with a maximum ozone concentration of 99 ppb at Cave Creek, and four other exceeding sites. (Both regimes 2 and 3 occur in this episode.) The regimes had in common low wind speeds, partial cloud cover, and a low pressure system in the southwest of the State and a high pressure system in the northeast. EPA finds the selection process to be well-documented and well-reasoned, and the selected episodes to be a good basis for the attainment demonstration.

Section IV of the Modeling TSD in Volume one of the Appendices to the 2007 Ozone Plan includes extensive statistical and graphical analysis demonstrating adequate overall model performance for the June 2002 episode, but also shows consistent underprediction for the August 2001 and July 2002 episodes. Under EPA Guidelines, models are used in a relative sense (see discussion on Relative Response Factors below), so although underpredictions in model performance do not necessarily mean that future design values would be underpredicted, they do suggest that these two episodes may be less reliable for predicting the effect of emissions changes. Thus, primary weight was given to the June 2002 episode in the attainment demonstration. CAMx model diagnostic sensitivity tests were performed by MAG to provide assurance that the model is adequately simulating the physical and chemical processes leading to ozone in the atmosphere and that the model responds in a scientifically reasonable way to emissions changes. The tests included zeroing out boundary condition concentrations, initial condition concentrations, and various categories of emissions. The model responded in a physically reasonable way in each of these tests. MAG also undertook sensitivity tests for MM5, which provides meteorological input to the CAMx air quality model. These are described in Appendix III to the Modeling TSD, and included incorporation of alternative observational data sets, and an alternative convection scheme to avoid overestimating convective rainfall in this dry southwestern area. The meteorological model was found to perform adequately for wind speed, wind direction, temperature, and humidity. EPA finds the procedures MAG followed to be well-documented and reasonable, and to be acceptable for supporting the modeled attainment demonstration.

For the modeled attainment test, the model is used to predict the air quality effect of changes in emissions due to land use changes, growth, and the effect of control measures. Under current EPA Guidance, the model is used to develop Relative Response Factors (RRFs) that give the model's response to emission changes, and the RRFs are applied to monitored design value concentrations to arrive at the predicted future concentrations. The particulars of the calculation, and which model grid cells and modeled days are to be included, are specified in the EPA Guidance. Guidance pp. 15, 25, and 155. MAG assessed the 2008 effect of the seven control measures using the EPA-specified procedure, and found the maximum predicted ozone design value to be 84 ppb, which is in attainment of the ozone NAAQS. It should be noted that this result includes 5 percent additional NO_X to create a safety margin for the transportation conformity motor vehicle emissions budget. EPA agrees that MAG's modeling demonstrates attainment of the ozone NAAQS by summer 2008.

In addition to a modeled attainment demonstration, which focuses on locations with an air quality monitor, EPA generally requires an Unmonitored Area Analysis. This analysis is intended to ensure that a control strategy leads to reductions in ozone at other locations that have no monitor but that might have base year (and/or future year) ambient ozone levels exceeding the NAAQS. The unmonitored area analysis uses a combination of model output and ambient data to identify areas that might exceed the NAAQS if monitors were located there. In order to examine unmonitored areas in all portions of the modeling domain, EPA recommends use of interpolated spatial fields of ambient data combined with gridded modeled outputs. Guidance, p. 29. MAG used a variation of the EPA-described approach, described in section V of the modeling TSD, as a corroboratory screening test. The attainment demonstration passed this corroboratory screening test. EPA notes that concentration gradients in the supplied spatial isopleth maps appear to be weak except in the downtown area where the monitoring network is fairly dense and the RRFs themselves have only weak spatial variation. We believe the plan's Unmonitored Area Analysis is adequate.

Finally, the Weight of Evidence Analysis in Appendix V of the Modeling TSD, in Volume two of the Appendices to the 2007 Ozone Plan, includes several supplemental analyses in support of the attainment demonstration. These include ozone air quality trends and precursor emission trends, both of which show continued progress and support the conclusion that the attainment demonstration is sound. Appendix G of Attachment II to the modeling protocol, in Volume two of the Appendices to the 2007 Ozone Plan also illustrated the downward ozone trends at all ozone monitors. Other analyses examined the sensitivity of the model to NO_X reductions, the representation of VOC speciation in the model, the VOC:NO_X ratio as a photochemical indicator, Process Analysis, and examination of Weekday vs. Weekend effects. These analyses provided observational and modeling evidence that the model is correctly replicating the ozone photochemistry of the area, and that the Weight of Evidence supports the conclusion that the Phoenix-Mesa will attain the ozone NAAQS in 2008. Additionally, Table 3 below shows that design values (DV) in ppm from all monitors in the Phoenix-Mesa nonattainment area, operated by three different agencies (Pinal County Air Quality Control District (PCAQCD), Maricopa County Air Quality Division (MCAQD), and ADEQ), appear to have been meeting the 1997 ozone NAAQS based on monitored ozone concentrations since 2005.

EPA proposes to find that the modeling provides an adequate basis for the RACM/RACT, RFP, and attainment demonstrations in the Phoenix-Mesa 2007 8-Hour Ozone Plan.

TABLE 3—OZONE DESIGN VALUES FROM 2005–2010 MONITORING DATA IN PHOENIX-MESA NONATTAINMENT AREA*

Site	Site ID	Agency		2005–07	2006–08	2007–09	2008–10
Apache Junction	04–013–3001	PCAQCD	DV (ppm)	0.076	0.080	0.075	0.073
			% complete	99	99	99	99
Buckeye	04–013–4011	MCAQD	DV (ppm)	0.065	0.066	0.064	0.064

TABLE 3—OZONE DESIGN VALUES FROM 2005–2010 MONITORING DATA IN PHOENIX-MESA NONATTAINMENT AREA*—Continued

Site	Site ID	Agency		2005–07	2006–08	2007–09	2008–10
			% complete	100	100	100	100
Blue Point	04–013–9702	MCAQD	DV (ppm)	0.067	0.064	0.067	0.070
			% complete	100	94	99	99
Cave Creek	04–013–4008	MCAQD	DV (ppm)	0.079	0.078	0.075	0.074
			% complete	100	100	100	100
Central Phoenix	04–013–3002	MCAQD	DV (ppm)	0.075	0.074	0.070	0.071
			% complete	99	97	100	100
Dysart	04–013–4010	MCAQD	DV (ppm)	0.067	0.067	0.066	0.068
			% complete	97	100	100	100
Falcon Field	04–013–1010	MCAQD	DV (ppm)	0.076	0.075	0.071	0.070
			% complete	97	98	100	100
Fountain Hill	04–013–9704	MCAQD	DV (ppm)	0.082	0.079	0.074	0.074
			% complete	98	100	99	100
Glendale	04–013–2001	MCAQD	DV (ppm)	0.075	0.074	0.071	0.072
			% complete	100	100	100	100
Humboldt Mountain	04–013–9508	MCAQD	DV (ppm)	0.081	0.078	0.074	0.071
			% complete	100	100	99	100
North Phoenix	04–013–1004	MCAQD	DV (ppm)	0.082	0.081	0.076	0.077
			% complete	99	95	100	100
Pinnacle Peak	04–013–2005	MCAQD	DV (ppm)	0.078	0.074	0.072	0.073
			% complete	99	99	100	99
Rio Verde	04–013–9706	MCAQD	DV (ppm)	0.083	0.080	0.075	0.072
			% complete	99	92	96	100
South Phoenix	04–013–4003	MCAQD	DV (ppm)	0.072	0.072	0.071	0.072
			% complete	99	99	99	100
South Scottsdale	04–013–3003	MCAQD	DV (ppm)	0.078	0.077	0.075	0.074
			% complete	98	97	99	99
JLG Supersite	04–013–9997	ADEQ	DV (ppm)	0.076	0.076	0.075	0.075
			% complete	100	98	100	99
Tempe	04–013–4005	MCAQD	DV (ppm)	0.077	0.077	0.073	0.071
			% complete	97	97	100	98
West Chandler	04–013–4004	MCAQD	DV (ppm)	0.076	0.076	0.073	0.073
			% complete	100	98	100	100
West Phoenix	04–013–0019	MCAQD	DV (ppm)	0.074	0.078	0.073	0.073
			% complete	100	99	99	99

*The data in this table has been certified in EPA's Air Quality System (AQS) database in accordance with the requirements of 40 CFR part 58. We provide these data only to support our evaluation of the modeling and attainment demonstration and not to support a determination regarding attainment, which is not part of today's proposed action.

3. Proposed Action on the Attainment Demonstration

In order to approve a SIP's attainment demonstration, EPA must make several findings:

First, we must find that the demonstration's technical bases, emission inventories and air quality modeling, are adequate. As discussed in section IV.A and IV.C.2, we are proposing to approve the base year emission inventory and to find the air quality modeling adequate to support the attainment demonstration.

Second, we must find that the SIP provides for expeditious attainment through the implementation of all RACM. As discussed above in section III.B, we propose to find that the 2007 Ozone Plan provides for implementation of all reasonably available control measures necessary for expeditious attainment of the 1997 8-hour ozone NAAQS and any related RFP requirements in the Phoenix-Mesa nonattainment area.

Third, we must find that the emission reductions that are relied on for attainment are creditable and are sufficient to provide for attainment. All of the key attainment measures relied on in the 2007 Ozone Plan to attain the 1997 8-hour ozone standard by June 15, 2009 have been adopted and approved into the SIP.

For the foregoing reasons, we propose to approve the attainment demonstration in the 2007 Ozone Plan for the Phoenix-Mesa nonattainment area.

D. Reasonable Further Progress Demonstration

CAA section 172(c)(2) requires that plans for nonattainment areas provide for reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [title 1, part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [standard] by the applicable date.'' The ozone implementation rule interprets the RFP requirements for the purposes of the 1997 ozone standards, establishing requirements for RFP that depend on the area's classification. For areas with attainment dates on or before June 15, 2009, RFP would be met by ensuring emissions reductions needed for attainment are implemented by the beginning of the ozone season prior to the attainment date. *See* 40 CFR 51.910(b) and 70 FR 71612.

The attainment date for the Phoenix-Mesa ozone nonattainment area is June 15, 2009, and as discussed in the RACM demonstration and control strategy (section IV.B) and the attainment demonstration (section IV.C) sections above, all of the control measures needed for the attainment demonstration were being implemented prior to the 2008 ozone season. We propose, therefore, to approve the RFP demonstration in the 2007 Ozone Plan.

E. Contingency Measures

1. Requirements for Contingency Measures

CAA section 172(c)(9) requires plans to provide for the implementation of contingency measures, that achieve additional emission reductions, to be undertaken if the area fails to meet RFP milestones or fails to attain by its attainment date. These contingency measures must be rules or measures that are ready for implementation quickly upon failure to meet milestones or attainment. The SIP should define trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or EPA. *See* 68 FR 32802 (June 2, 2002) and 70 FR 71612 (Nov. 29, 2005).

Additional guidance on the CAA contingency measure provisions is found in the General Preamble at 13510–13512 and 13520. The guidance indicates that states should adopt and submit contingency measures sufficient to provide a 3 percent emission reduction from the adjusted RFP base year. This level of reduction is generally acceptable to offset emission increase while States are correcting their SIPs. These reductions would be beyond what is needed to meet the attainment and/or RFP requirement. States may use reductions of either VOC or NO_X or a combination of both to meet the contingency measure requirements. General Preamble at 13520, footnote 6. EPA guidance also provides that contingency measures could be implemented early, *i.e.,* prior to the milestone or attainment date.[21] Consistent with this policy, states are allowed to use excess reductions from already adopted measures to meet the CAA section 172(c)(9) and 182(c)(9) contingency measure requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment that will provide for continued progress while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved in numerous SIPs. See 62 FR 15844 (April 3, 1997) (approval of the Indiana portion of the Chicago area 15 percent Rate of Progress plan); 66 FR 30811 (June 8, 2001) (proposed approval of the Rhode Island post-1996 ROP plan); and 66 FR 586 and 66 FR 634 (January 3, 2001) (approval of the Massachusetts and Connecticut 1-hour ozone attainment demonstrations). In the only adjudicated challenge to this approach, the court upheld it. *See LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004); 70 FR 71612.

2. Contingency Measures in the 2007 Ozone Plan

Contingency measure provisions for the Phoenix-Mesa nonattainment area and the methodologies used to estimate the emission reductions from these measures are described in Chapters 4 and 5 of the 2007 Ozone Plan and Section V of Volume 1 of the Appendices to the 2007 Ozone Plan. Table 4 lists the five contingency measures and the estimated reductions in VOC and NO_X emissions from each measure. All five contingency measures have already been implemented in the Phoenix-Mesa nonattainment area, but credit for these measures were not needed or used to demonstrate attainment. See 2007 Ozone Plan at pp. 4–7 through 4–10 and 5–15 through 5–17.

TABLE 4—EMISSION REDUCTIONS FROM INDIVIDUAL CONTINGENCY MEASURES IN THE PHOENIX-MESA 8-HOUR OZONE MODELING DOMAIN

Base case emissions on June 6, 2002	VOC 696.13 metric tons/day		NO_X 291.82 metric tons/day	
Contingency measure	Reduction (metric ton/day)	Percent reduction	Reduction (metric ton/day)	Percent reduction
Expansion of Area A Boundaries	1.3	0.2	0.7	0.2
Gross Polluter Option for I/M Waivers	<0.1	<0.1	<0.1	<0.1
Increased Waiver Repair Limit Options	<0.1	<0.1	<0.1	<0.1
Federal Heavy Duty Diesel Vehicle Standards	<0.1	<0.1	2.5	0.9
Federal Nonroad Equipment Standards	14.6	2.1	15.6	5.3
Total	15.9	2.3	18.8	6.4

Source: 2007 Ozone Plan at Table 5–6.

a. Expansion of Area A Boundaries

In 2001, the Arizona legislature passed H.B. 2538 to expand the boundaries of Area A, adding additional portions of Maricopa County west of Goodyear and Peoria and a small area on the north side of Lake Pleasant. The implementation of air quality measures within the new Area A boundaries began on January 1, 2002, except for public sector alternative fuel requirements to be phased in over a seven-year period. MAG modeled this contingency measure by increasing the number of registered vehicles in Area A that will be required to participate in the I/M program. MAG estimated the emission reductions from this contingency measure to be 1.3 metric tons per day of VOC and 0.7 metric tons per day of NO_X, but did not take credit for this measure in the attainment demonstration. See 2007 Ozone Plan at 4–7 and 4–8.

b. Gross Polluter Option for I/M Waivers

The Arizona legislature passed S.B. 1427 in 1998 to require vehicle owners with vehicles emitting more than twice the emission standard to repair the vehicle sufficiently to reduce the emission levels to less than twice the standard in order to obtain a compliance waiver from the Vehicle Emissions Inspection Program. ADEQ modeled the emission reductions for this measure and estimated the emission reductions from this contingency measure to be less than 0.1 metric tons per day of VOC and less than 0.1 metric tons per day of NO_X. MAG but did not take credit for this measure in its attainment

[21] Memorandum, G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch to Air Directors, ''Contingency Measures for Ozone and Carbon Monoxide Redesignations,'' June 1, 1992.

demonstration. See 2007 Ozone Plan at 4–9.

c. Increased Waiver Repair Limit Options

In 1998, the Arizona legislature passed S.B. 1427 to increase the amount a person must spend to repair a failing 1967–1974 vehicle in Area A in order to qualify for a waiver from $100 to $200. MAG modeled this measure using MOBILE6.2 by reducing the pre-1981 vehicle waiver rate from 4 to 2.6 percent. The emission reductions from this contingency measure were estimated to be less than 0.1 metric tons per day of VOC and less than 0.1 metric tons per day of NO_X. MAG did not take credit for this measure in its attainment demonstration. See 2007 Ozone Plan at 4–9.

d. Federal Heavy Duty Diesel Vehicle Standards

On January 18, 2001, EPA issued a final rule that set more stringent emission standards for new heavy duty diesel vehicles (66 FR 5001). The rule requires high-efficiency catalytic convertors or comparable technologies be installed on 2007 and later model year diesel vehicles, and requires ultra-low sulfur fuel be used in all onroad diesel vehicles beginning in 2006. MAG modeled emission reductions from this federal measure using MOBILE6.2 and estimated VOC reductions of less than 0.1 metric tons of VOC per day and 2.5 metric tons of NO_X per day. MAG did not take credit for this measure in its attainment demonstration. See 2007 Ozone Plan at 4–9.

e. Federal Nonroad Equipment Standards

On October 23, 1998, EPA issued a final rule to set more stringent Tier 2 and Tier 3 emission standards for new diesel nonroad equipment (63 FR 56967). The Tier 2 program phased in more stringent standards for all equipment between 2001 and 2006 and Tier 3 imposed even more stringent standards for 50 to 750 horsepower engines in 2006 to 2008. Additionally, on June 29, 2004, EPA issued the Clean Air Nonroad Diesel—Tier 4 Final rule to require manufacturers to produce nonroad engines with emission controls that will reduce emissions by more than 90 percent (69 FR 38958). The Tier 4 standards apply to nonroad engines less than 25 horsepower beginning in 2008 and will apply to larger engines over 2011 to 2015. MAG estimated emission reductions from this measure using the EPA NONROAD model and projected VOC emission reductions of 14.6 metric tons of VOC per day and 15.6 metric tons of NO_X per day. MAG did not take credit for this measure in its attainment demonstration. See 2007 Ozone Plan at 4–9 and 4–10.

3. Proposed Action on the Contingency Measures

We propose to approve the contingency measures in the 2007 Ozone Plan. The contingency measures are consistent with EPA guidance that recommends a 3 percent emission reduction. All contingency measures have already been implemented but EPA guidance allows for the early implementation of contingency measures.

F. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Requirements for Motor Vehicle Emission Budgets

CAA section 176(c) requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions that involve Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified in 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTP) and transportation improvement programs (TIP) conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emission budgets (budgets) contained in the SIP. An attainment, maintenance, or RFP SIP should establish budgets for the attainment year, each required RFP year, or last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors. Ozone attainment and RFP plans should establish budgets for NO_X and VOC. See 40 CFR 93.102(b)(2)(i).

Before an MPO may use budgets in a submitted SIP, EPA must first determine that the budgets are adequate or approve the budgets. In order for EPA to find the budgets adequate and approvable, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements. To meet these requirements, the budgets must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations. See 40 CFR 93.118(e)(4)(v).

2. Motor Vehicle Emission Budgets in the Phoenix-Mesa 2007 Ozone Plan

The 2007 Ozone Plan for Phoenix Mesa included budgets for VOC and NO_X for the 2008 attainment year. On October 4, 2007, we notified ADEQ and MAG that we found the MVEB for the 2008 attainment year adequate for transportation conformity purposes. See letter from Deborah Jordan, EPA Region 9, to Nancy Wrona, ADEQ, and Dennis Smith, MAG, ''RE: Adequacy Status of Motor Vehicle Emissions Budgets in Eight-Hour Ozone Plan for the Maricopa Nonattainment Area (June 2007)'', October 4, 2007. We published a notice of our findings at 72 FR 60666 (October 25, 2007). The budget for the 2008 attainment year is represented by onroad VOC and NO_X emissions for the Phoenix-Mesa modeling domain on the peak episode day in June 2008 of 72.3 metric tons per day of VOC and 145.5 metric tons per day of NO_X. MAG used geographic information systems (GIS) to separate the onroad mobile emissions from the Phoenix-Mesa 8-hour ozone nonattainment area from the modeling domain, resulting in the estimated 2008 MVEB of 67.9 metric tons per day of VOC and 138.2 metric tons per day of NO_X.

3. Proposed Action on the Motor Vehicle Emission Budgets

Based on our evaluation of the 2007 Ozone Plan and the budgets contained in it, which reflect all motor vehicle control measures contained in the attainment and RFP demonstration, we are proposing to approve the 2008 MVEB.

V. EPA's Proposed Action

For the reasons discussed above, EPA is proposing to approve Arizona's submitted SIP for attaining the 1997 8-Hour Ozone Standard in the Phoenix-Mesa nonattainment area.

Specifically, EPA is proposing to approve under CAA section 110(k)(3) the following elements of the 2007 Ozone Plan for Phoenix-Mesa:

1. The 2002 base year emission inventory as meeting the requirements

of CAA section 172(c)(3) and 40 CFR 51.915;

2. The reasonably available control measures demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);

3. The reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.910;

4. The attainment demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.908;

5. The contingency measures for failure to make RFP or to attain as meeting the requirements of CAA section 172(c)(9); and

6. The motor vehicle emission budgets for the attainment year of 2008, which are derived from the attainment demonstration, as meeting the requirements of CAA section 176(c) and 40 CFR part 93, subpart A.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Nitrogen Dioxide, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2012.

Keith Takata,

Acting Regional Administrator, EPA Region IX.

[FR Doc. 2012–8729 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0724, FRL–9657–3]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Prevention of Significant Deterioration Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittals from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the current Idaho SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time. We will address the requirements of this sub-element in a separate action. EPA is also proposing to approve a SIP revision that applies Idaho's Prevention of Significant Deterioration (PSD) Program to greenhouse gas (GHG) emitting sources above certain thresholds, updates Idaho's SIP to incorporate by reference revised versions of specific federal regulations, and removes unnecessary language from the SIP due to the incorporation by reference of the federal NAAQS and PSD regulations. In addition, EPA is proposing to rescind the Federal Implementation Plan (FIP) put in place to ensure the availability of a permitting authority for greenhouse gas emitting sources in Idaho.

DATES: Comments must be received on or before May 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0724, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10–Public_Comments@epa.gov*.
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0724. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553–6357, email address: *hall.kristin@epa.gov,* or the EPA Region 10 address located in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

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I. What action is EPA proposing?

EPA is proposing to approve the State Implementation Plan (SIP) submittals from the State of Idaho demonstrating that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure'' elements of section 110(a)(2). The Idaho Department of Environmental Quality (DEQ) submitted a certification to EPA on September 15, 2008, certifying that Idaho's SIP meets the infrastructure obligations for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. The certification included an analysis of Idaho's SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Subsequently, on June 24, 2010, Idaho submitted an updated certification to EPA for CAA sections 110(a)(2)(D) and 110(a)(2)(G) for multiple NAAQS, including the 1997 8-hour ozone NAAQS. EPA is proposing to find that the Idaho SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). This action does not address infrastructure requirements with respect to the 1997 $PM_{2.5}$ NAAQS which EPA intends to act on at a later time.

EPA is also proposing to approve portions of a SIP revision submitted by Idaho DEQ on June 20, 2011. This SIP revision includes updates to the incorporation by reference of certain federal regulations, changes to Idaho's rules on the sulfur content of fuels, and revisions to sections of the Idaho SIP that have become unnecessary due to the incorporation by reference of federal NAAQS and PSD regulations. In this action, EPA is proposing to approve a portion of the June 20, 2011, SIP revision that applies Idaho's Prevention of Significant Deterioration (PSD) Program to greenhouse gas (GHG) emitting sources at the emissions thresholds and in the same time frames as those specified in the PSD and Title V GHG Tailoring Final Rule (Tailoring Rule) (75 FR 31514, June 3, 2010). This proposed revision addresses the flaws discussed in EPA's SIP call to states which found that several state SIPs, including Idaho's, did not apply PSD to GHG-emitting sources.[1] EPA subsequently issued a FIP which included Idaho.[2] Upon final approval of this GHG-related PSD program revision, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho.

EPA is also proposing to approve the portion of the June 20, 2011, revision that updates the incorporation by reference of the following regulations revised as of July 1, 2010: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58. EPA is also proposing to approve the addition of the incorporation by reference of the final rule for the Primary National Air Quality Standards for Sulfur Dioxide (75 FR 35520, June 22, 2010). EPA is not acting on the portions of the June 20, 2011, SIP revision that are not related to the criteria pollutants regulated under title I of the CAA or the requirements for SIPs under section 110 of the Act. Finally, EPA is proposing to approve the portions of the June 20, 2011, revision that remove language from the Idaho SIP that has become unnecessary due to Idaho's incorporation by reference of the federal NAAQS at 40 CFR part 50 and the federal PSD regulations at 40 CFR 52.21. Specifically, EPA is proposing to approve the removal of the subsections of IDAPA 58.01.01.577 ''Ambient Air Quality Standards for Specific Pollutants'' that relate to pollutants for which EPA has promulgated a NAAQS, and which are now unnecessary because Idaho has incorporated the federal NAAQS by reference into the state SIP at IDAPA 58.01.01.107. EPA is also proposing to approve the changes to Idaho's PSD regulations at IDAPA 58.01.01.581.01 to remove the increments table in its entirety, and to instead reference the federal PSD increment requirements contained in 40 CFR 52.21(c), which are incorporated by reference in the Idaho SIP at IDAPA 58.01.01.107. EPA is not acting on the revision to IDAPA 58.01.01.008 because

[1] Action to Ensure Authority to Issue Permits Under the PSD Program to Sources of GHG Emissions: Finding of Substantial Inadequacy and SIP Call (75 FR 77698, Dec. 13, 2010).

[2] Action to Ensure Authority to Issue Permits under the PSD Program to Sources of GHG Emissions: Federal Implementation Plan (75 FR 82246, Dec. 30, 2010).

it is related to Idaho's Tier I Operating Permit Program required under title V of the CAA and is not part of the SIP. In addition, EPA is not acting on the revision to IDAPA 58.01.01.751 because it is related to a non-criteria pollutant and is not part of the SIP. The proposed revisions to Idaho's rules for the sulfur content of fuels are not being acted on at this time. EPA intends to address the remainder of the June 20, 2011, SIP revision in a subsequent rulemaking.

II. What is the background for the action that EPA is proposing?

a. Section 110(a)(1) and (2)

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standard created uncertainty about how to proceed, and many states did not provide the required infrastructure SIP submissions for the newly promulgated standard.

To help states meet this statutory requirement for the 1997 ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).[3] This guidance provides that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's federally-approved SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

b. Greenhouse Gas (GHG) Component of PSD Programs

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this action. Please see the preambles for these GHG-related actions for more background.

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for the proposed action on the Idaho SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action (74 FR 66496, Dec. 15, 2009), the ''Johnson Memo Reconsideration'' (75 FR 17004, Apr. 2, 2010), the ''Light-Duty Vehicle Rule'' (75 FR 25324, May 7, 2010), and the ''Tailoring Rule'' (75 FR 31514, June 3, 2010). Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

c. Annual Incorporation by Reference (IBR) of Federal Regulations

Idaho incorporates by reference various portions of Federal regulations codified in the Code of Federal Regulations (CFR). However, when a Federal regulation originally incorporated by reference into the Idaho SIP at IDAPA 58.01.01 on a specific date is subsequently changed, IDAPA 58.01.01 becomes out of date, and in some cases, inconsistent with the revised version of the Federal regulation. To avoid potential inconsistencies and keep IDAPA 58.01.01 up to date with changes in Federal regulations, Idaho submits a revision to its SIP on an annual basis, updating the IBR citations in IDAPA 58.01.01 so they reflect any changes made to the Federal regulations during that year. Idaho's current SIP includes the approved incorporation by reference of specific federal regulations revised as of July 1, 2008. In Idaho's June 20, 2011, SIP revision, the state has included the 2009 and 2010 annual IBR updates. The updates for the 2009 annual IBR update are superseded by the 2010 annual IBR update which revises the citation dates for specific federal regulations as of July 1, 2010.

III. What infrastructure elements are required under sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

EPA's October 2, 2007, guidance clarified that two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan

[3] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007.

requirements are due pursuant to CAA section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or 110(a)(2)(I).

This action also does not address the requirements of 110(a)(2)(D(i) for the 1997 8-hour ozone NAAQS which have been addressed by two separate actions issued by EPA. On November 26, 2010, EPA approved the SIP submittal from the Idaho Department of Environmental Quality to address provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS (75 FR 72705). The provisions approved in this action included three prongs of 110(a)(2)(D)(i): significant contribution to nonattainment of these NAAQS in any other state (prong 1); interference with maintenance of these NAAQS by any other state (prong 2); and interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS (prong 3). Subsequently, on June 22, 2011, EPA approved portions of a SIP revision submitted by Idaho as meeting the requirements of the fourth prong of CAA section 110(a)(2)(D)(i) as it applies to visibility for the 1997 8-hour ozone NAAQS (prong 4) (76 FR 36329, June 22, 2011).

This action also does not address the requirements of CAA section 110(a)(2)(E)(ii) regarding state boards. EPA will address the requirements of this sub-element in a separate action. Furthermore, EPA interprets the section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

IV. What is the scope of action on infrastructure submittals?

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[4] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule'' (67 FR 80186, Dec. 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP for the 1997 8-hour ozone NAAQS submittal from Idaho.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the 1997 8-hour ozone infrastructure SIP for Idaho.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may

[4] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[5] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[6]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[7] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[8] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[9]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and

[5] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[6] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule'' (70 FR 25162, May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[7] *See, e.g.,* 70 FR 25162 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

the 1997 $PM_{2.5}$ NAAQS.[10] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [11] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [12] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [13] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[14] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the 1997 8-hour ozone infrastructure SIP for Idaho.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16]

[10] *See,* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[11] *Id.,* at page 2.

[12] *Id.,* at attachment A, page 1.

[13] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[14] *See,* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[15] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[16] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See,* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule'' (75 FR 82536, Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona,

Continued

Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[17]

V. What is EPA's analysis of Idaho's submittal?

The Idaho SIP submittal cites an overview of the Idaho air quality laws and regulations including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules of the Control of Air Pollution in Idaho. Idaho Department of Environmental Quality (DEQ) annually updates and refers to EPA for incorporation by reference of all NAAQS and updates to 40 CFR part 51, Appendix W—Guidelines on Air Quality Models. The Idaho submittal addresses the elements of section 110(a)(2) as described below. A more detailed review and analysis of the Idaho infrastructure SIP elements is provided in the Technical Support Document (TSD), which is found in the docket for this proposed rulemaking.

110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, as well as schedules and timetables for compliance. EPA notes that the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of Section 172, not the timing requirement of Section 110(a)(1).

Idaho's submittal: The Idaho SIP submittal cites several laws and regulations including Idaho Code Section 39–105(3)(d) which provides Idaho DEQ with the broad power to supervise and administer a system to safeguard air quality. In addition, Idaho Code Section 39–115 provides Idaho DEQ with specific authority for the issuance of air quality permits and to charge and collect permit fees. Rules relating to air quality permits are found at IDAPA 58.01.01.200 through 228, 300 through 399 and 400 through 410. Estimates of ambient concentrations are based on air quality models, databases and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). Idaho DEQ annually updates and refers to EPA for incorporation by reference of all national ambient air quality standards and updates to 40 CFR part 51, Appendix W. IDAPA 58.01.01.401.03 provides DEQ with the authority to require a Tier II permit if it determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increments. Specific requirements for major sources in attainment or unclassifiable areas are listed in IDAPA 58.01.01.202, 205, and 209. Specific requirements for major sources in nonattainment areas are listed in 58.01.01.202, 204, and 209. Federal NSR requirements are incorporated in both IDAPA 58.01.01.204 and 205. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 50 for the National Primary and Secondary Ambient Air Quality Standards, revised as of July 1, 2008, on November 26, 2010 (75 FR 72719). We are proposing to concurrently approve the portion of the June 20, 2011, SIP revision which updates the incorporation by reference of 40 CFR part 50, 40 CFR part 51, 40 CFR part 52, 40 CFR part 53, and 40 CFR part 58 at IDAPA 58.01.01.107.03 as of July 1, 2010. Idaho has no areas designated nonattainment for the 1997 8-hour ozone NAAQS. Idaho regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs. Therefore, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance[18] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109), November 24, 1987, and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

Idaho's submittal: The Idaho SIP submittal references IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50 National Primary and Secondary Air Quality Standards, 40 CFR part 52 Approval and Promulgation of Implementation Plans, 40 CFR part 53 Ambient Air Monitoring Reference and Equivalent Methods, and 40 CFR part 58 Appendix B Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. These rules give Idaho authority to implement ambient air monitoring surveillance systems in accordance with the requirements of referenced sections of the CAA.

Idaho DEQ collects and reports to EPA ambient air quality data for $PM_{2.5}$, PM_{10}, NO_X, CO, ozone and SO_X. These data are reviewed, verified and validated prior to being submitted to EPA's Air Quality System, or AQS, no later than 90 days from the end of the calendar quarter from which the data was collected. On July 1 of each year,

California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[18] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' Memorandum to EPA Air Division Directors, August 11, 1999.

the previous year's ambient air monitoring data is certified by the Idaho DEQ Air Division Administrator as being true, accurate and complete.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58 was submitted by Idaho to EPA on January 15, 1980 (40 CFR 52.670) and approved by EPA on July 28, 1982. This air quality monitoring plan has been subsequently updated, with the most recent submittal dated July 1, 2011. EPA approved the plan on September 6, 2011. This plan includes, among other things, the locations for the ozone monitoring network. Idaho makes this plan available for public review on Idaho DEQ's Web site at *http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx.* The Web site also includes an interactive map of Idaho's air monitoring network. We are proposing to concurrently approve the portion of the June 20, 2011, SIP revision which updates the incorporation by reference of 40 CFR part 50, 40 CFR part 51, 40 CFR part 52, 40 CFR part 53, and 40 CFR part 58 at IDAPA 58.01.01.107.03 as of July 1, 2010. Based on the foregoing, EPA proposes to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

Idaho's submittal: The Idaho SIP submittal refers to Idaho Code Section 39–108 which provides DEQ with the authority to enforce both administratively and civily the Idaho Environmental Protection and Health Act (EPHA), or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39–109. Emergency order authority, similar to that under section 303 of the CAA, is located at Idaho Code Section 39–112. The Idaho submission also refers to laws and regulations requiring stationary source compliance with the NAAQS discussed in their response to 110(a)(2)(A). Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: To generally meet the requirements of section 110(a)(2)(C), a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 8-hour ozone NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the CAA. In addition, Idaho has no nonattainment areas for the 1997 ozone NAAQS.

EPA believes Idaho code provides DEQ with the authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the state Attorney General's Office for civil or criminal enforcement. EPA therefore proposes to approve the Idaho SIP as meeting the requirements of 110(a)(2)(C) related to enforcement for the 1997 8-hour ozone NAAQS.

EPA most recently approved revisions to Idaho's PSD program on November 26, 2010 (75 FR 72719). Idaho's PSD program includes NOx as a precursor for ozone. However, EPA previously noted that Idaho's PSD program had a deficiency because the state did not have the authority to implement the PSD permitting program with respect to GHG emissions (75 FR 77698, Dec. 13, 2010). Since that time, Idaho undertook rule revisions and submitted a SIP revision to EPA on June 20, 2011, which addresses this deficiency. The Idaho SIP revision includes an update to the state's incorporation by reference of federal PSD program regulations at 40 CFR part 52, including 40 CFR 52.21, as of July 1, 2010, and adds a new incorporation by reference of the Tailoring Rule because it became effective after the July 1, 2010, citation date. These federal rules are incorporated by reference into Idaho rules at IDAPA 58.01.01.107.03. As a result of EPA's approval of the SIP revision, Idaho's SIP will apply to GHG emitting sources as specified in the amended definition of ''subject to regulation'' in 40 CFR 52.21(b)(49). Idaho's SIP will also phase in PSD program applicability to sources at the emissions thresholds and time frames laid out in the Tailoring Rule. In this action EPA is proposing to approve the portion of Idaho's June 20, 2011, SIP revision to apply Idaho's PSD program to greenhouse gas emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule. In conjunction with this proposed approval of Idaho's PSD program for GHG-emitting sources, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho. As a result, EPA is proposing to approve Idaho's SIP as consistent with the requirements of element 110(a)(2)(C) as it relates to PSD for the 1997 8-hour ozone NAAQS.

In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements for major sources. EPA most recently approved changes to Idaho's NSR program, including NSR Reform, on November 26, 2010 (75 FR 72719). In addition, EPA has determined that Idaho's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its precursors. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

Based on the foregoing, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS.

110(a)(2)(D): Interstate Transport

Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

As noted above, this action does not address the requirements of 110(a)(2)(D)(i) for the 8-hour ozone

NAAQS which have been addressed by two separate findings issued by EPA on November 26, 2010 (75 FR 72705) and June 22, 2011 (76 FR 36329). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: EPA most recently approved revisions to Idaho's PSD program on November 26, 2010 (75 FR 72719). Idaho's PSD regulations provide for notice consistent with the requirements of the EPA PSD program. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. The state also has no pending obligations under section 115 or 126(b) of the Act. EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA Section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under CAA Section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

Idaho's submittal: The Idaho SIP submittal addresses 110(a)(2)(E)(i) regarding adequate personnel, funding and authority and refers to specific Idaho statute including Idaho Code Section 39–106 which gives the Idaho DEQ Director the authority to hire personnel to carry out duties of the department. In addition, Idaho Code 39–105 lays out the powers and duties of Idaho DEQ's director and gives the director the power to utilize any federal aid and grants. Finally, Idaho Code Section 39–107B establishes the Department of Environmental Quality Fund which receives appropriated funds, transfers from the general fund, federal grants, fees for services, permitting fees and other program income.

With regard to the state boards requirements under CAA Section 128, Idaho indicated in its submission that the state's Board of Environmental Quality, established pursuant to Idaho Code Section 39–107, meets the requirements of Section 128. Idaho refers to the State's Ethics in Government Act of 1990 at Idaho Code Section 59–701, et seq. which lays out the ethics requirements for public officials including acting in the public interest, disclosure of conflicts of interest, and procedures for excusing board members where conflicts exist.

With regard to assurances that the state has responsibility for ensuring adequate implementation of the plan where the state has relied on local or regional government agencies, DEQ addressed the agreements with locals on nonattainment plans. On certain nonattainment plans, DEQ has entered into agreements for local implementation and enforcement of measures such as wood stove and street sweeping ordinances. When DEQ relies on local enforcement it also is able to enforce the local ordinance under its own authorities. For instance, failure to street sweep when required may constitute a violation of the requirement to control fugitive dust, IDAPA 58.01.01.650–651. If a resident failed to comply with a woodstove ordinance, then DEQ could issue the resident a Tier II permit and enforce the ordinance terms then included in the permit. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA is proposing to find that the above-listed laws and regulations provide Idaho DEQ with adequate authority and resources to carry out SIP obligations with respect to the requirements of CAA section 110(a)(2)(E)(i) for the 1997 8-hour ozone NAAQS. EPA is also proposing to find that Idaho has provided necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of the SIP with regards to the 1997 8-hour ozone NAAQS. Therefore EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(E)(i) and (E)(iii) for the 1997 8-hour ozone NAAQS. Idaho's SIP submission did not address all of the requirements of CAA Section 128, specifically the provision which requires a SIP to specify that a board or body which approves permits or enforcement orders under the CAA to have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA. EPA is taking no action on CAA section 110(a)(2)(E)(ii) at this time and will address these requirements in a separate action.

110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

Idaho's submittal: The Idaho SIP submittal states that DEQ's air quality permits are practically enforceable and contain requirements to (i) install, maintain and replace equipment, (ii) monitor emissions, and (iii) submit reports. IDAPA 58.01.01.121 provides authority to Idaho DEQ to require monitoring, recordkeeping and periodic reporting where sources may violate air quality provisions, orders or rules. In addition, the Idaho DEQ may issue information orders including requirements to conduct emissions monitoring, record keeping, reporting and other requirements. IDAPA 58.01.01.157 specifies test methods and procedures for source testing and reporting to the Idaho DEQ. Records are available for public inspection under Idaho's Public Records Act. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: The provisions cited by Idaho's SIP submittal provide authority for monitoring, recordkeeping and reporting requirements for sources subject to major and minor source permitting. EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA Section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

110(a)(2)(G): Emergency Episodes

Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Idaho's submittal: The Idaho SIP submittal cites Idaho Code 39–108 which provides emergency order authority comparable to that in CAA Section 303. In addition, the Idaho submittal cites several Idaho regulations that comprise Idaho's Air Pollution Emergency Rules (IDAPA 58.01.01.550–562) the purpose of which is ''to define criteria for an air pollution emergency, to formulate a plan for preventing or alleviating such an emergency, and to specify rules for carrying out the plan.'' Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: As noted in EPA's October 2, 2007, guidance, the significant harm level for the 8-hour ozone NAAQS shall remain unchanged at 0.60 ppm ozone, 2-hour average, as indicated in 40 CFR 51.151. EPA believes that the existing ozone-related provisions of 40 CFR 51 Subpart H remain appropriate. Idaho's regulations listed above, which were previously approved by EPA on January 16, 2003 (68 FR 2217), continue to be consistent with the requirements of 40 CFR 51.151. Accordingly, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

Idaho's submittal: The Idaho SIP submittal refers to Idaho Code Section 39–105(3)(d) which provides DEQ with the broad authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107. Idaho also refers to provisions cited in their submittal related to permitting at CAA Section 110(a)(2)(A) discussed above to demonstrate that the Idaho SIP satisfies this requirement. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA finds that Idaho has adequate authority to regularly update the state SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly submits SIP revisions to EPA in order to revise the SIP for recent federal regulatory changes. EPA most recently approved revisions to Idaho's SIP on November 26, 2010 (75 FR 72719). Accordingly, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in section 110(a)(2) not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time of the nonattainment area plan requirements pursuant to section 172. These requirements are: (i) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment NSR or section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121. Section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, section 110(a)(2)(J) requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

Idaho's submittal: The Idaho SIP submittal cites laws and regulations relating to public participation processes for SIP revisions and permitting programs. Idaho DEQ consults with other state agencies, local agencies, and nongovernmental organizations, as well as with the environmental agencies of other states regarding air quality issues. Idaho refers to Idaho Code Section 39–105.03(c) which promotes outreach with local governments and Idaho Code Section 39–129 which provides authority for Idaho DEQ to enter into agreements with local governments. In addition, Idaho refers to its transportation conformity rules, and states that Idaho DEQ generally incorporates by reference the federal PSD and Nonattainment new source review programs. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: Idaho's SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major source PSD permitting and Tier II operating permits. Idaho DEQ routinely coordinates with local governments, states, federal land managers and other stakeholders on air quality issues and provides notice to appropriate agencies related to permitting actions. Idaho regularly participates in regional planning processes including the Western Regional Air Partnership which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the US EPA whose purpose is to understand current and evolving regional air quality issues in the West. Therefore, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 1997 8-hour ozone NAAQS.

Idaho actively participates and submits information to EPA's AIRNOW and Enviroflash Air Quality Alert programs. Idaho also provides the daily air quality index to the public on their Web site at *http://www.deq.idaho.gov/air/aqindex.cfm,* as well as measures that can be taken to prevent exceedances. Therefore, EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 1997 8-hour ozone NAAQS.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, EPA has evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting. EPA most recently approved revisions to Idaho's PSD program on November 26, 2010 (75 FR 72719). Idaho's PSD program regulates NO_X as a precursor for ozone. Idaho has no nonattainment areas for the 1997 8-hour ozone standard. EPA believes that, conditioned upon the finalization of the

rescission of the GHG FIP and approval of the SIP revision pertaining to the application of PSD permitting to the specified GHG sources that is part of this action, Idaho's SIP meets the requirements of CAA section 110(a)(2)(J) for PSD for the 1997 8-hour ozone NAAQS. As referenced in the analysis for section 110(a)(2)(C), EPA previously noted that Idaho's PSD program had a deficiency because the state did not have the authority to implement the PSD permitting program with respect to GHG emissions (75 FR 77698, Dec. 13, 2010). Since that time, Idaho undertook rule revisions and submitted a SIP revision to EPA on June 20, 2011, a portion of which addresses this deficiency. The Idaho SIP revision includes an update to the state's incorporation by reference of 40 CFR part 52, including federal PSD program regulations at 40 CFR 52.21 as of July 1, 2010, and adds a new incorporation by reference of the Tailoring Rule because it became effective after the July 1, 2010 citation date. These federal rules are incorporated by reference into Idaho rules at IDAPA 58.01.01.107.03. As a result, Idaho's SIP will apply to GHG emitting sources as specified in the amended definition of ''subject to regulation'' in 40 CFR 52.21(b)(49). In this action EPA proposes to approve the portion of Idaho's June 20, 2011, SIP revision to apply Idaho's PSD program to GHG emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule. In conjunction with this proposed approval of Idaho's PSD program for GHG-emitting sources, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho. As a result, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(J) with regard to PSD for the 1997 8-hour ozone NAAQS.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation triggered under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above, EPA is proposing to approve the Idaho SIP as meeting the requirements of section 110(a)(2)(J) for the 1997 8-hour ozone NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

Section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Idaho's submittal: Air quality modeling is conducted during development of revisions to the SIP, as appropriate for the state to demonstrate attainment with required air quality standards. Modeling is also addressed in Idaho's source permitting process as discussed at Section 110(a)(2)(A) above. Estimates of ambient concentrations are based on air quality models, data bases and other requirements specified in 40 CFR 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference under IDAPA 58.01.01.107.03. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA previously approved Idaho regulations on air quality modeling into the SIP. EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) revised as of July 1, 2008, on November 26, 2010 (75 FR 72719).

We are proposing to concurrently approve the portion of the June 20, 2011, SIP revision which updates the incorporation by reference of 40 CFR part 50, 40 CFR part 51, 40 CFR part 52, 40 CFR part 53, and 40 CFR part 58 at IDAPA 58.01.01.107.03 as of July 1, 2010, as previously discussed above. While Idaho has no nonattainment areas for ozone, Idaho has submitted modeling data to EPA related to other pollutants. For example, Idaho submitted to EPA the PM_{10} Maintenance Plan for Ada County/Boise Idaho Area which was supported by air quality modeling data. The maintenance plan was approved by EPA as a SIP revision on October 27, 2003 (68 FR 61106). EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA Section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

110(a)(2)(L): Permitting Fees

Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the state's title V operating permit program.

Idaho's submittal: The Idaho SIP submittal states that CAA section 110(a)(2)(L) requires owners and operators of major stationary sources to pay to the permitting authority fees to cover the costs of review, implementation and enforcement until a fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V. EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. EPA regularly reviews DEQ's title V fee program to determine if the fee structure is adequate to pay for the program and assure the funding is only going toward title V implementation.

EPA analysis: EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While Idaho's operating permit program is not formally approved into the state's SIP, it is a legal mechanism the state can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V permitting program included a demonstration that the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Idaho collects sufficient fees to administer the title V permit program. Therefore, EPA is proposing to conclude that Idaho has satisfied the requirements of CAA Section 110(a)(2)(L) for the 1997 8-hour ozone NAAQS.

110(a)(2)(M): Consultation and Participation by Affected Local Entities

Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Idaho's submittal: Consultation with a variety of different state and local organizations is a regular part of Idaho DEQ's process of developing SIP revisions. The requirements for plan preparation and public process include 40 CFR part 51, incorporated by reference under IDAPA 58.01.01.107.03.a. Idaho also referenced rules cited under 110(a)(2)(J) above. Please see the TSD in the docket for this action for a detailed description of the above-referenced Idaho provisions.

EPA analysis: EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans—on November 26, 2010 (75 FR 72719). As previously discussed above, we are proposing to approve portions of the June 20, 2011, SIP revision which update the incorporation by reference of 40 CFR part 51 as of July 1, 2010, among other federal regulations. EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404 which provide opportunity and procedures for public comment and notice to appropriate federal, state and local agencies on January 16, 2003 (68 FR 2217). EPA is proposing to approve Idaho's SIP as meeting the requirements of CAA Section 110(a)(2)(M) for the 1997 8-hour ozone NAAQS.

VI. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within ''Indian Country'' as defined in 18 U.S.C. 1151.[19] Therefore, EPA proposes that this SIP approval not extend to ''Indian Country'' in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574 (October 4, 2001) (full approval does not extend to Indian Country).

VII. Proposed Action

EPA is proposing to approve the SIP submittal from the State of Idaho demonstrating that the Idaho SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Idaho for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on CAA section 110(A)(2)(E)(ii) at this time. EPA will address the requirements of this sub-element in a separate action. EPA is also proposing to approve a portion of Idaho's June 20, 2011, SIP submittal that applies Idaho's PSD Program to GHG-emitting sources at the emissions thresholds and in the same time frames as those specified in the Tailoring Rule. In conjunction with this proposed approval of Idaho's PSD program for GHG-emitting sources, EPA is proposing to rescind the FIP at 40 CFR 52.37 which provides for EPA to be the PSD permitting authority for GHG-emitting sources in Idaho.

EPA is also proposing to approve portions of Idaho's June 20, 2011, annual IBR SIP update to revise the incorporation by reference of federal regulations revised as of July 1, 2010, in order to ensure Idaho's SIP is up to date with changes to federal regulations. EPA is not acting on the portions of the SIP revision that are not related to the criteria pollutants regulated under title I of the Act or the requirements for SIPs under section 110 of the Act. Finally, EPA is proposing to approve the removal of language from the Idaho SIP that has become unnecessary due to Idaho's incorporation by reference of the federal NAAQS and the federal PSD regulations. Specifically, EPA is proposing to approve the removal of the subsections of IDAPA 58.01.01.577 ''Ambient Air Quality Standards for Specific Pollutants'' that relate to pollutants for which EPA has promulgated a NAAQS, and which are now unnecessary because Idaho has incorporated the federal NAAQS by reference into the state SIP. EPA is also proposing to approve the changes to Idaho's PSD regulations at IDAPA 58.01.01.581.01 to remove the increments table in its entirety, and to instead reference the federal PSD increment requirements contained in 40 CFR 52.21(c), which are incorporated by reference in the Idaho SIP. This action is being taken under section 110 and part C of the CAA.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Idaho, and EPA notes that it

[19] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 27, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–8706 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, and 175

[Docket No. PHMSA–2009–0095 (HM–224F)]

RIN 2137–AE44

Hazardous Materials: Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking; request for additional comment.

SUMMARY: In this document, PHMSA is seeking comment on the impact of changes to the requirements for the air transport of lithium cells and batteries that have been adopted into the 2013–2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air (ICAO Technical Instructions). PHMSA is considering whether to harmonize with these requirements and is publishing this notice to allow interested persons an opportunity to supplement comments to our January 11, 2010, Notice of Proposed Rulemaking (NPRM).

DATES: *Comments Due Date:* May 11, 2012.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2009–0095) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Asking for Confidential Treatment: If you want PHMSA to give your comment confidential treatment, you must file it in paper form and take the following steps in accordance with 49 CFR 105.30:

(1) Mark ''confidential'' on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

(3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552 or it is information referred to in 18 U.S.C. 1905).

PHMSA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

FOR FURTHER INFORMATION CONTACT: Kevin A. Leary, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553, or Michael Locke, Program Development Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–1074.

Background

On January 11, 2010 (75 FR 1302), PHMSA, in coordination with the Federal Aviation Administration (FAA), published a Notice of Proposed Rulemaking (NPRM) to address the air transportation risks posed by lithium cells and batteries. Some of the proposals in the NPRM were intended to harmonize provisions in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) with provisions in the ICAO Technical Instructions; other proposals in the NPRM were intended to address safety concerns arising from research findings from the FAA Technical Center suggesting that current aircraft systems and procedures may not be sufficient to combat a fire involving lithium batteries (from either an external cargo fire or internal source from manufacturing defects).[1] The FAA Technical Center issued an additional report in 2010 that supplements the previous studies. All of these reports are available in the public docket of this rulemaking. Many of the commenters to the NPRM urged PHMSA to adopt lithium battery transport safety standards identical to those in the 2011–2012 edition of the ICAO Technical Instructions.

Since PHMSA published the NPRM, the ICAO Dangerous Goods Panel has met several times and devoted considerable discussion to the provisions applicable to the air transport of lithium cells and batteries. As a result, there have been many changes in the ICAO standards applicable to the air transport of lithium cells and batteries. Given the increased efficiency and clarity in having a uniform global standard, PHMSA considers harmonization with international standards when there is no adverse impact to safety. Therefore, consistent with 49 U.S.C. 5120, PHMSA is now considering harmonizing the HMR with lithium battery provisions recently adopted by ICAO and which will become effective on January 1, 2013.

[1] Flammability Assessment of Bulk-Packed, Non rechargeable Lithium Primary Batteries in Transport Category Aircraft; June 2004 (DOT/FAA/AR–04/26); and Flammability Assessment of Bulk-Packed, Rechargeable Lithium-Ion Cells in Transport Category Aircraft; April 2006 (DOT/FAA/AR–06/38).

To ensure full consideration of harmonization with the HMR, PHMSA seeks comments from the public on the impact of these changes should PHMSA adopt them. To the extent possible, we request commenters include specific data with verifiable references to support their statements. A full report of these changes is available through the ICAO at the following URL: *http://www.icao.int/safety/DangerousGoods/Pages/DGP.aspx.*

Current Standards and Summary of Changes

The ICAO Technical Instructions assign six separate packing instructions (PIs) to describe the requirements applicable to the various types and configurations of lithium batteries:

1. Lithium ion batteries (PI 965).
2. Lithium ion batteries packed with equipment (PI 966).
3. Lithium ion batteries contained in equipment (PI 967).
4. Lithium metal batteries (PI 968).
5. Lithium metal batteries packed with equipment (PI 969).
6. Lithium metal batteries contained in equipment (PI 970).

Within each of these packing instructions, there are two sections. Section I applies to lithium batteries that are subject to all applicable regulatory requirements including UN packaging, marking and labeling, shipping papers, a notice to the pilot in command and requirements for the air carrier to inspect each package for compliance. Section II outlines specific requirements that, if met, allow small lithium cells and batteries to be shipped excepted from many of the provisions associated with hazardous material and, these shipments may be handled as general cargo.

The changes to these exceptions in the ICAO Technical Instructions for lithium batteries not packed with, or contained in, equipment (PI 965 and PI 968) effectively split Section I of these packing instructions into:

- ''Section IA,'' which covers lithium cells and batteries currently subject to all regulatory requirements; and
- ''Section IB,'' which covers lithium cells and batteries formerly transported as general cargo.

In effect, packages containing more than 8 lithium cells or 2 lithium batteries, which were previously excepted from most of the requirements of the ICAO Technical Instructions, would be subject to additional requirements including package weight limits (10 kg for lithium ion cells and batteries and 2.5 kg for lithium metal cells and batteries) and a requirement to display a Class 9 label and the lithium battery handling label [2] (Section IB). In addition, the shipper must provide the carrier with the following information:

- The name and address of the shipper and consignee;
- The appropriate proper shipping name and UN number; and
- The number of packages and the gross mass of each package.

The air carrier must:

- Provide the information on this document to the pilot and retain this information for at least 3 months; and
- Inspect each package for compliance with the ICAO Technical Instructions.

The full text of the changes recently adopted by the ICAO Dangerous Goods Panel is available in the rulemaking docket and illustrated in the following charts:

Section II limits	Lithium ion cells or batteries not more than 2.7 Wh	Lithium ion cells more than 2.7 Wh but not more than 20 Wh	Lithium ion batteries more than 2.7 Wh but not more than 100Wh
Maximum number of cells/batteries per package	No limit	8 cells	2 batteries.
Maximum net mass per package	2.5 kg	n/a	n/a

Section II limits	Lithium metal cells or batteries with not more than 0.3 g lithium content	Lithium metal cells with a lithium content more than 0.3 g but not more than 1 g	Lithium metal batteries with a lithium content more than 0.3 g but not more than 2 g
Maximum number of cells/batteries per package	No limit	8 cells	2 batteries.
Maximum net mass per package	2.5 kg	n/a	n/a

Section IB limits	Cell/battery size limit	Package gross mass limit
.....	.....	.....
Lithium Ion Cells	20 Wh	10 kg
Lithium Ion Batteries	100 Wh	10 kg
Lithium Metal Cells	1 g	2.5 kg
Lithium Metal Batteries	2 g	2.5 kg

Request for Information

To adequately consider harmonization with ICAO standards, PHMSA seeks qualitative and quantitative information from the public on the following questions. In your comments please refer to the number of the specific question(s) to which you are responding. We do not expect every commenter to be able to answer every question. Please respond to those questions you feel able to answer.

The following questions generally apply to lithium metal cells and batteries up to 1 gram per lithium metal cell and 2 grams per lithium metal battery or 20 Wh per lithium ion cell and 100 Wh per lithium ion battery. Further, please focus responses on data for cells shipped alone (that is, not packed with, or contained in, equipment), designated UN3090 (Lithium Metal Batteries) or UN3480 (Lithium Ion Batteries), and which would be covered by PI965 or PI968. To the extent possible, we request commenters include specific data with

[2] The lithium battery handling label (figure 5–31 in the ICAO Technical Instructions) consists of text and symbols that communicate the presence of lithium ion or lithium metal cells or batteries as appropriate, an indication that a flammability hazard exists if the package is damaged, special procedures to be taken in the event the package is damaged and a telephone number for additional information.

verifiable references to support their statements.

1. Beginning in 2013, how many lithium cells, batteries, and packages are anticipated to be subject to the additional requirements of the proposed Section IB of ICAO Packing Instructions 965 and 968, or, in other words, how many shipments of lithium cells, batteries, and packages were previously excepted from full hazardous materials packaging and labeling requirements, but would now be subject to additional requirements? These packages would typically contain more than 2 batteries or 8 cells, but weigh less than 10 kg. Also, if quantifiable, please specify projected figures for shipments that would fall under Section IA and Section II.

2. What impacts (if any) would arise from the allowance to use non-UN Specification packaging for cells and batteries to be shipped under the proposed Section IB of ICAO Packing Instructions 965 and 968?

3. What impacts (if any) would result if PHMSA chooses not to harmonize with 2013–2014 ICAO Technical Instructions applicable to lithium batteries?

4. Will harmonization with the 2013–2014 ICAO Technical Instructions result in any modal impacts or diversions, i.e., will shippers be less likely to ship by air, in favor of maritime, truck, or rail transport of these materials? If a modal shift will occur, please quantify the impact of this shift if possible (costs increase or decrease, shipment time differences, and other considerations).

5. What is the projected burden (time and/or cost) for compliance with the information collection activities and disclosures outlined in this notice? If PHMSA were to harmonize with the 2013–2014 ICAO Technical Instructions, are there other Paperwork Reduction Act related activities associated with implementation that PHMSA should consider?

6. If PHMSA were to harmonize the 2013–2014 ICAO Technical Instructions in a final rule, are there ways in which PHMSA could reduce regulatory burden or cost of implementation, for example, delayed effective date?

7. Please provide any other relevant information that PHMSA should consider before harmonizing with ICAO's standards for lithium cells and batteries.

Issued in Washington, DC, on April 5, 2012.

R. Ryan Posten,

Deputy Associate Administrator.

[FR Doc. 2012–8550 Filed 4–10–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120330244–2242–01]

RIN 0648–BB77

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 12 to the Fishery Management Plan for Salmon Fisheries in the EEZ off the Coast of Alaska (FMP). If approved, Amendment 12 would comprehensively revise and update the FMP to reflect the North Pacific Fishery Management Council's (Council's) salmon management policy and to comply with Federal law. This proposed rule is necessary to revise specific regulations and remove obsolete regulations in accordance with the modifications proposed by Amendment 12. These proposed regulations are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments must be received no later than May 29, 2012.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0295, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0295 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the proposed Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska and the draft Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: This proposed rule would implement Amendment 12 to the FMP. The Council has submitted Amendment 12 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of this amendment was published in the **Federal Register** on April 2, 2012 (77 FR 19605) with comments invited through June 1, 2012. Respondents do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by the end of the comment period for the NOA, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 12 and addressed in the response to comments in the final rule.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management

Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR part 679. The FMP was approved in 1979 and last comprehensively revised in 1990. The current FMP conserves and manages the Pacific salmon commercial and sport fisheries that occur in the exclusive economic zone (EEZ) off Alaska. The FMP establishes two management areas: the East Area is the EEZ in the Gulf of Alaska east of Cape Suckling (143°53.6′ West Longitude), and the West Area is the EEZ off the coast of Alaska west of Cape Suckling. The FMP manages commercial salmon fisheries differently in each area. In the East Area, the FMP delegates management of the commercial troll salmon fishery to the State of Alaska (State) to manage in compliance with the Pacific Salmon Treaty, Magnuson-Stevens Act, and FMP. The FMP prohibits commercial salmon fishing with net gear in the East Area. In the West Area, the FMP prohibits commercial salmon fishing, except for commercial salmon fishing with net gear in three defined areas of the EEZ adjacent to Cook Inlet, Prince William Sound, and the Alaska Peninsula. The FMP delegates management of the sport fishery to the State in both areas.

Although the FMP has been amended nine times in the last two decades, no comprehensive reconsideration of management strategies or the scope of Federal management has occurred since 1990. State fisheries regulations and Federal and international laws affecting Alaska salmon have changed since 1990, and the reauthorized Magnuson-Stevens Act expanded the requirements for FMPs. Additionally, the 1990 FMP is vague with respect to management authority for commercial salmon fishing in the three defined areas that occur in the West Area. Therefore, the Council determined that the FMP must be updated to comply with current Magnuson-Stevens Act requirements and amended to more clearly reflect the Council's policy regarding the State's continued management authority over commercial fisheries in the West Area, the Southeast Alaska commercial troll fishery, and the sport fishery.

Amendment 12

In December 2011, the Council voted unanimously to recommend Amendment 12 to the FMP. The Council considered revisions to the FMP at five separate meetings that occurred over more than a year. At each regularly scheduled and noticed public meeting, the Council took public testimony and considered written and oral public comments, providing stakeholders with opportunities for involvement on this issue. Additionally, the Council conducted a special open workshop for stakeholders in September 2011, which was attended by more than 20 members of the public, three Council members, Council staff, and State and Federal agency staff. The Council considered the comments and suggestions made during that workshop in developing Amendment 12.

Amendment 12 would comprehensively revise the FMP to reflect the Council's salmon management policy, which is to facilitate State of Alaska salmon management in accordance with the Magnuson-Stevens Act, Pacific Salmon Treaty, and applicable Federal law. Under this policy, the Council identified six management objectives to guide salmon management under the FMP and achieve the management policy: (1) Prevent overfishing and achieve optimum yield, (2) manage salmon as a unit throughout their range, (3) minimize bycatch and bycatch mortality, (4) maximize economic and social benefits to the Nation over time, (5) protect wild stocks and fully utilize hatchery production, and (6) promote safety. The Council, NMFS, and the State of Alaska will consider these management objectives in developing FMP amendments and associated fishery management measures.

To reflect the Council's policy and objectives, Amendment 12 would redefine the FMP's management area to exclude Cook Inlet, Prince William Sound, and Alaska Peninsula net fishing areas and the sport fishery from the West Area. The Council determined that excluding these areas and the sport fishery from the West Area and the FMP would allow the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range, rather than imposing dual State and Federal management. The FMP would continue to apply to the vast majority of the EEZ west of Cape Suckling and would maintain the prohibition on commercial salmon fishing in the redefined West Area.

In the East Area, Amendment 12 would maintain the current scope of the FMP and would reaffirm that management of the commercial and sport salmon fisheries in the East Area is delegated to the State. The FMP relies on a combination of State management and management under the Pacific Salmon Treaty to ensure that salmon stocks, including trans-boundary stocks, are managed as a unit throughout their ranges and interrelated stocks are managed in close coordination. Maintaining the FMP in the East Area would leave existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and other applicable Federal law.

The Council also recommended a number of provisions to update the FMP and bring it into compliance with the Magnuson-Stevens Act and other applicable Federal law. Amendment 12 includes these changes in a reorganized FMP with a more concise title, ''Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska.'' The Notice of Availability prepared for Amendment 12 provides detailed information on the provisions of Amendment 12 as well as additional explanation of the Council's rationale for Amendment 12 (77 FR 19605, April 2, 2012).

Proposed Rule

To implement Amendment 12, this proposed rule would amend Chapter 50 of the CFR for the following purposes:

- Revise § 679.1 Purpose and Scope to reflect the new FMP title and clarify that the FMP governs commercial salmon fishing in the West Area and commercial and sport salmon fishing in the East Area.
- Revise the definition of Salmon Management Area, at § 679.2, to explicitly exclude the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area from the West Area.
- Revise § 679.3(h), the relation of domestic fishing for salmon to other laws, and remove references to laws that are no longer applicable or current, such as references to the North Pacific Fisheries Act of 1954.
- Remove regulations requiring Federal salmon permits at § 679.4(h). The Council recommended removing the requirement for Federal salmon permits because the Council determined and NMFS agrees that such permits are no longer necessary. All current participants in the East Area commercial troll fishery have State of Alaska limited entry permits. According to the 1979 FMP, the Federal salmon permit was established as a complement to the State limited entry permit, intended to limit capacity in the EEZ by preventing persons who did not receive a State limited entry permit from simply shifting their fishing efforts into Federal waters. Additionally, the 1979 FMP explains that there was an interest in ensuring that the few vessels that had fished in the EEZ but not landed their catch in Alaska could continue to have access to the EEZ, even if they were not eligible for a State limited entry permit.

The problems identified in the 1979 FMP were addressed by this Federal permit system. In 1979 or 1980, NMFS issued 2 non-transferrable limited entry permits and these permits are no longer active in the fishery. As a result, the Federal permit system is obsolete and should be terminated.

• Revise prohibitions at § 679.7(h) to explicitly prohibit commercial fishing for salmon using any gear except troll gear in the East Area of the Salmon Management Area, and to explicitly prohibit commercial fishing for salmon in the West Area. Troll gear has been the only authorized gear for commercial fishing for salmon in the East Area since the original FMP was approved in 1979. Likewise, the FMP has prohibited commercial salmon fishing in the majority of West Area since 1979. With the removal of the three traditional net fishing areas from the West Area, an exception from this prohibition is no longer needed and the proposed rule would explicitly prohibit commercial fishing in the newly defined West Area.

• Replace Figure 23 with a new map to show the newly defined Salmon Management Area and the three areas excluded from the West Area.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

NMFS guidelines for economic reviews of regulatory actions describe the criteria to evaluate whether a rule would impose impacts on ''a substantial number'' of small entities and the criteria used to evaluate whether a rule would impose ''significant economic impacts.''

Description and Estimate of the Number of Small Entities to which the Rule Applies

Current regulations implementing the FMP do not directly regulate any small entities, except to prohibit fishing in certain areas and/or with certain gear types. These prohibitions have largely been in place since the FMP was first approved in 1979 and this proposed rule clarifies, but does not substantively change, these prohibitions.

Under the current FMP, the Council and NMFS could have directly regulated the salmon fishing vessels in the East Area and in the three net fishing areas in the West Area. However, since 1990, NMFS and the Council have chosen not to directly regulate salmon fishing vessels in any of these areas.

Under the proposed rule, NMFS and the Council are removing the possibility of Federal direct regulation of salmon fishing vessels in the three net fishing areas in the West Area by changing the definition of the Salmon Management Area at § 679.2 to exclude these areas. NMFS and the Council are also removing the possibility of direct regulation of the sport fishery in the West Area by clarifying that the regulations only apply to commercial fishing for salmon in the West Area. By removing these areas from the Salmon Management Area and Federal regulations, salmon fishery management remains under State of Alaska jurisdiction. The State of Alaska has managed these salmon fisheries since statehood. Therefore, while this proposed rule would clearly define the scope of the federal regulations, it does not substantively change the management of the salmon fisheries in a way that would have impacts on small entities.

The Council and NMFS are retaining the potential to directly regulate salmon fishing vessels in the East Area; however, no such direct regulation is under consideration and the FMP explicitly delegates regulation of the salmon commercial troll fishery and sport fishery to the State of Alaska.

Estimate of Economic Impact on Small Entities, by Entity Size and Industry

Because this action does not directly regulate small entities, there are no economic impacts from this action on small entities.

Description of, and an Explanation of the Basis for, Assumptions Used

The economic analysis contained in the draft Environmental Assessment and Regulatory Impact Review for this action further describes (1) The regulatory and operational characteristics of the proposed action; (2) the history of the salmon fisheries under the FMP, including the role of Federal management and the delegation of management to the State of Alaska; (3) the history of this action; and (4) the details of the alternatives considered for this action, including the preferred alternative (see **ADDRESSES**).

From this analysis, it is clear that the FMP does not directly regulate any entities, including small entities. Under the FMP, participants in the salmon fisheries under the FMP are directly managed by the State of Alaska. This action does not change State management, it only revises and updates the regulations to reflect the revised and updated FMP. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 5, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.,* and Pub. L. 108–447.

2. In § 679.1, revise paragraph (i) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(i) *Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP).* (1) Regulations in this part govern commercial fishing for salmon by fishing vessels of the United States in the West Area of the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are commercial and sport fishing for salmon in the East Area of the Salmon Management Area.

* * * * *

3. In § 679.2, revise the definition for ''Salmon Management Area'' to read as follows:

§ 679.2 Definitions.

* * * * *

Salmon Management Area means those waters of the EEZ off Alaska (see Figure 23 to part 679) under the authority of the Salmon FMP. The Salmon Management Area is divided

into a West Area and an East Area with the border between the two at the longitude of Cape Suckling (143°53.6′ W):

(1) *The East Area* means the area of the EEZ in the Gulf of Alaska east of the longitude of Cape Suckling (143°53.6′ W).

(2) *The West Area* means the area of the EEZ off Alaska in the Bering Sea, Chukchi Sea, Beaufort Sea, and the Gulf of Alaska west of the longitude of Cape Suckling (143°53.6′ W) but excludes the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area, shown in Figure 23 and described as:

(i) The Cook Inlet Area which means the EEZ waters north of a line at 59°46.15′ N;

(ii) The Prince William Sound Area which means the EEZ waters shoreward of a line that starts at 60°16.8′ N and 146°15.24′ W and extends southeast to 59°42.66′ N and 144°36.20′ W and a line that starts at 59°43.28′ N and 144°31.50′ W and extends northeast to 59°56.4′ N and 143°53.6′ W.

(iii) The Alaska Peninsula Area which means the EEZ waters shoreward of a line at 54°22.5′ N from 164°27.1′ W to 163°1.2′ W and a line at 162°24.05′ W from 54°30.1′ N to 54°27.75′ N.

* * * * *

4. In § 679.3, revise paragraph (f) to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(f) *Domestic fishing for salmon.* Management of the salmon commercial troll fishery and sport fishery in the East Area of the Salmon Management Area, defined at § 679.2, is delegated to the State of Alaska.

* * * * *

§ 679.4 [Amended]

5. In § 679.4, remove and reserve paragraph (a)(1)(v) and paragraph (h).

6. In § 679.7, revise paragraph (h) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(h) *Salmon Fisheries.* (1) Engage in commercial fishing for salmon using any gear except troll gear, defined at § 679.2, in the East Area of the Salmon Management Area, defined at § 679.2 and Figure 23 to this part.

(2) Engage in commercial fishing for salmon in the West Area of the Salmon Management Area, defined at § 679.2 and Figure 23 to this part.

* * * * *

7. Revise Figure 23 to part 679 to read as follows:

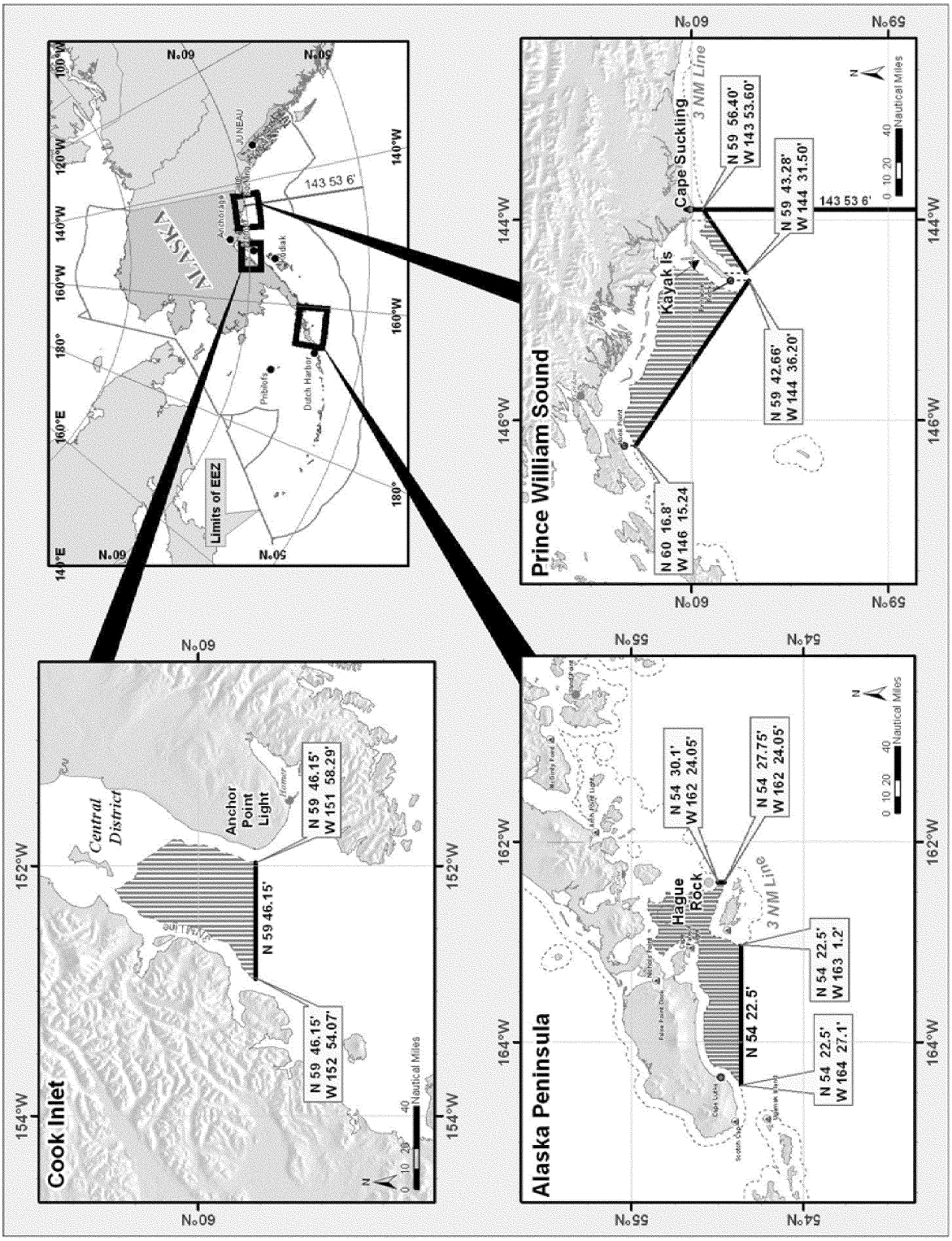

Figure 23 to part 679. Salmon Management Area

[FR Doc. 2012–8750 Filed 4–10–12; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 70
Wednesday, April 11, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra National Forest, Bass Lake Ranger District, California, Whisky Ecosystem Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bass Lake Ranger District is proposing a series of ecological restoration treatments, east of the community of North Fork, California. This would be north of Cascadel Point, south of Shuteye Peak, and west of Whisky Ridge. Treatment areas have been initially identified to restore forest conditions to more closely resemble pre-1900s stand structures which would result in forests that are more resilient and resistant to expected changes in climate and disturbance regimes. Treatments are needed to maintain or improve growth and vigor of conifer stands, reduce the spread and intensity of wildfires within and outside of the Wildland Urban Interface (WUI) and restore other ecological processes.

DATES: Comments concerning the scope of this analysis should be received no later than 30 days after the publication of this notice in the **Federal Register**. The draft environmental impact statement (DEIS) is expected in December 2012 and the final environmental impact statement (FEIS) is expected in March 2013.

ADDRESSES: Send written comments to the U.S. Forest Service, Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643, ATTN: David Martin. Comments may also be sent via email to *comments-pacificsouthwest-sierra@fs.fed.us* (use Rich Text format (.rtf) or Word format (.doc)) or via facsimile to (559) 877–3108.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for the proposed action. However comments submitted anonymously will be accepted and considered.

FOR FURTHER INFORMATION CONTACT: Aimee Smith, Interdisciplinary Team Leader, at Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background Information: The Whisky Ecosystem Restoration Project (Madera County, California) lies within the Willow Creek watershed, where impacts of early 1900's railroad logging and subsequent harvest activities on these federal and formerly private lands, combined with the exclusion of fire, have altered forest conditions within the Project area. Stand species composition has shifted from more fire resistant, shade intolerant pines to less fire resistant, shade tolerant fir and incense cedar. Prior to these activities, these forests were comprised of larger diameter pine dominated stands that were less susceptible to drought and fire. Frequent low to moderate intensity fires limited understory vegetation resulting in more open stand conditions. Currently, stands are more even aged, dense, and multilayered, dominated by second-growth (approximately 85 to 110 year-old) less fire resistant, shade tolerant white fir and incense cedar. Decades of fire exclusion has resulted in excessive accumulations of down woody material.

The Whisky Ridge Ecological Restoration Project lies within the elevation range for the Southern Sierra Fisher Conservation Area. Public concern and management review surrounding the significance of potential impacts to the Pacific fisher and the California spotted owl during past projects has led to the decision to document the environmental analysis with an environmental impact statement (EIS) for this project. The US Fish and Wildlife Service currently list pacific fishers as a Candidate species for listing under the Endangered Species Act; while California spotted owls are a Forest Service Sensitive Species for Region 5.

Purpose and Need for Action

The purpose of this Project is to promote ecosystem resilience, sustainability, and health under current and future conditions through the restoration of key ecological processes, biodiversity, wildlife habitat, and structural heterogeneity.

The impacts of past railroad logging and subsequent harvest activities on these federal and formerly private lands, combined with the exclusion of fire, have altered forest conditions within the Project area. Stand species composition has shifted from more fire resistant, shade intolerant pines to less fire resistant, shade tolerant fir and incense cedar. There is a need to restore forest conditions within proposed treatment areas to more closely resemble pre-1900s stand structures which would result in forests that are more resilient and resistant to expected changes in climate and disturbance regimes. Proposed treatments are needed to maintain or improve growth and vigor of conifer stands, reduce the spread and intensity of wildfires and restore other ecological processes.

There is a need to treat conifer stands to improve their resiliency to insect attack, diseases, wildfire, drought conditions, and increased stress on vegetation due to predicted warmer temperatures and longer periods of depleted soil moisture.

Stocking levels (stand densities) have reached or are reaching density levels where declining growth and vigor is occurring from inter-tree competition thus increasing potential rates of tree mortality. Proposed thinning treatments would reduce the uncharacteristically high percentage of incense cedar and fir within stands. Thinning treatments would reduce inter-tree competition resulting in improved individual tree growth and vigor leading to accelerated development of larger diameter more resilient trees.

Proposed treatments would provide a buffer between developed areas and wildland to protect communities from

moderate/high intensity wildfires, as well as minimizing the spread of wildfire originating from developed areas onto forested lands. There is a need to treat the surface (dead and down fuels) and ladder fuels to reduce the risk of spread and intensity of wildfire.

Proposed Action

The Whisky Ridge Ecological Restoration Project proposes to;

- Restore key wildlife structures and improve wildlife habitat by maintaining and restoring key components that are utilized for shelter, reproduction sites, resting or food sources;
- Increase resiliency of mixed conifer, pine and fir stands through density management by beginning the process of returning treatment areas to conditions more closely resembling those present prior to the early 1900s;
- Maintain or improve growth and vigor of pine, mixed conifer, and fir stands, as well as conifer plantations through density management;
- Minimize the effects of wildland fire in the high risk (probability of ignition occurring), high hazard (availability of fuels to sustain a fire) wildland urban intermix area, and surrounding forest by reducing the potential for uncharacteristically large and severe wildfire and facilitate conditions that result in low-to-moderate severity wildland fire;
- Treat surface and ladder fuels to reduce the potential for a surface fire to transition into a sustained crown fire;
- Allow for the reintroduction of fire as a process restoration tool;
- Recover failed conifer plantations and openings by planting conifers within specific sites;
- Use integrated weed management to prevent and control infestations of noxious weeds;
- Restore production and enhance vitality of culturally gathered plant material;
- Protect the historic values and characteristics of archaeological and historical cultural resources and improve their integrity by reducing fuels within cultural resource sites;
- Restore and stabilize degraded watershed features such as meadows, streams, and riparian features by improving channel stability;
- Decommission unapproved trails that are contributing to resource degradation;
- Review the Sierra National Forest Motorized Travel Management plan and determine if any roads within the Project area recommended for potential decommissioning should be addressed under this proposal;
- Minimize livestock impacts to riparian features by developing range improvements (e.g. off-site water developments).

The Whisky Ridge Ecological Restoration Project encompasses 18,285 acres. Approximately 7,500 acres would be analyzed for treatments.

Possible Alternatives

To comply with NEPA, the Forest Service will evaluate additional alternatives to the proposed action developed based on public comments. A no action alternative to provide a baseline for comparison to the action alternatives will be included within the EIS. Each alternative will be explored and evaluated, or rationale will be given for eliminating an alternative from detailed study.

Responsible Official

The Responsible Deciding Official is Scott G. Armentrout, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93612.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need or take no action.

Scoping Process

The notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The project is included in the Sierra National Forest's quarterly scheduled of proposed actions (SOPA). Information on the proposed action will also be posted on the Sierra National Forests Web site, *http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=37829,* and will also be advertised in both the Fresno Bee and the Oakhurst Sierra Star. This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Comments submited during this scoping period should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the comnenter has with the proposal. It is important reviewers provide their comments at such times in such a manner that they are useful to the agency's preparation on the environmental impact statement.

Dated: April 4, 2012.

Scott G. Armentrout,

Forest Supervisor.

[FR Doc. 2012–8661 Filed 4–10–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gore Creek Restoration Project; Intent To Prepare an Environmental Impact Statement

AGENCY: Medicine Bow-Routt National Forests, Forest Service, USDA.

Project: Gore Creek Restoration Project.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Medicine Bow-Routt National Forests, will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Gore Creek Restoration Project (Gore Creek). The Gore Creek analysis area encompasses approximately 76,000 acres of National Forest System (NFS) land with 6,900 acres of interspersed private land.

The Yampa Ranger District is proposing a variety of actions in the Gore Pass area to improve watershed health and reduce potential erosion issues. Timber harvesting that took place outside of previously analyzed timber sale boundaries has resulted in impacts that had not been previously analyzed. Before rehabilitation can be completed, a new analysis must be conducted to address the previous activities and the proposed rehabilitation activities.

In order to complete previously analyzed vegetation management projects, an analysis of additional temporary roads needs to occur. Included in the analysis is the further consideration of the roads that would be necessary to complete both proposed, remaining timber management activities and the restoration activities. The analysis will be used to determine the best methods for minimizing watershed impacts from the current roads, proposed roads and road construction. Included in the analysis of the existing and proposed road construction will be the consideration of restoration of dispersed campsites within riparian areas within the project area, which may be impacting watershed health. Also included in the analysis will be the effects of disposing of merchantable timber and other vegetation resulting from emergency clearing work within the power line right-of-ways in the analysis area.

DATES: Comments concerning the scope of the analysis should be received by 30

days from the publication of this Notice. The Draft Environmental Impact Statement is expected to be available for public review in January 2013, the Final Environmental Impact Statement is expected to be available in March 2013, and the Record of Decision is expected to be released in March 2013.

ADDRESSES: Send written comments to Jack Lewis, Yampa District Ranger, P.O. Box 7, Yampa, Colorado 80483 or email comments to *comments-rocky-mountain-medicine-bow-yampa@fs.fed.us.* All comments, including names and addresses of commenters, when provided, are placed in the record and will be available for public inspection and copying. The public may review the comments at the Yampa Ranger District, 300 Roselawn Ave., Yampa, Colorado 80483. Visitors are encouraged to call ahead to (970) 638–4516 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jamie Krezelok, Project Manager, Hahn Peaks/Bears Ears Ranger District, 925 Weiss Drive, Steamboat Springs, Colorado 80487, (970) 870–2256 or email—*jkrezelok@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TTF) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The *purpose* of the Gore Creek project is to address the environmental impacts created during implementation of the Rock Creek decision and reduce current impacts associated with roads in the analysis area.

The needs for the proposed action include:

- Analyzing the landings, slash piles, and skid trails that were inadvertently created during timber sale activities.
- Analyze effects of temporary roads needed to complete the Rock Creek sales.
- Analyze additional proposed actions associated with completing the Rock Creek sales.
- Analyze the clean-up activities for powerlines in the analysis area.
- Improve watershed health through relocation and/or decommissioning of roads and dispersed campsites that may be causing adverse impacts to stream networks within the project boundary.

Proposed Action

The Yampa Ranger District of the Medicine Bow-Routt National Forests, proposes to authorize vegetation management and restoration activities on specified areas within the Gore Creek Restoration project area in order to meet or move toward desired conditions in a specified timeframe. Vegetation treatments may include; piling and stacking of timber that has already been cut, removing decks, and pile burning. Associated rehabilitation activities on landings, slash piles, skid trails, and temporary roads may include; ripping, seeding, slash, re-contouring, scarification, and erosion control. Watershed improvement projects are proposed on National Forest System Roads (NFSR) 185, 241, 242, 243, and 246 and may include; changing primary type of use on portions of existing roads, improving drainage on roads, re-routing portions of system roads, road decommissioning, new road construction, and dispersed campsite decommissioning along streams.

Responsible Official

The Official responsible for this proposal is Jack H. Lewis, District Ranger, Yampa Ranger District, The responsible Official will consider the analysis and conclusions of the environmental effects and then document the final decision in a Record of Decision (ROD).

Nature of Decision To Be Made

The Gore Creek Restoration Environmental Impact Statement will document the site-specific management proposals, alternatives to the Proposed Action, and the analysis of the effects of the activities proposed in the alternatives. It will form the basis for the Responsible Official to determine: (1) Whether or not the Proposed Action and alternatives are responsive to the issues, consistent with Forest Plan direction and if not whether a Forest Plan amendment would be necessary, meet the purpose and need, and are consistent with other related laws and regulations directing National Forest Management activities; (2) whether or not the information in the analysis is sufficient to implement proposed activities; and (3) which actions, if any, to approve.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. Comments that are site-specific in nature are most helpful to resource professionals when trying to narrow and address the public's issues and concerns.

All comments will be reviewed and considered to identify relevant issues. Issues that cannot be resolved through design features or minor changes to the Proposed Action may generate alternatives to the Proposed Action. This process is driven by comments received from the public, other agencies, and internal Forest Service concerns. To assist in commenting, a scoping letter providing more detail on the project proposal has been prepared and is available to interested parties at *http://www.fs.usda.gov/projects/mbr/landmanagement/projects.* Contact Jamie Krezelok, Project Coordinator, at the address listed in this notice of intent if you would like to receive a copy.

Dated: April 4, 2012.

Melissa A. Dressen,

Yampa Acting District Ranger.

[FR Doc. 2012–8585 Filed 4–10–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Generic Clearance for Geographic Partnership Programs.

OMB Control Number: 0607–0795.

Form Number(s): Various.

Type of Request: Extension of a currently approved collection.

Burden Hours: 200,450.

Number of Respondents: 39,109.

Average Hours per Response: 15 hours on average.

Needs and Uses: The U.S. Census Bureau requests approval from the Office of Management and Budget (OMB) for a three year extension of the generic clearance called the Geographic Partnership Programs (GPPs) that covers a number of activities needed to update or conduct research on the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The information collected by these programs in cooperation with tribal, state, and local governments is essential to the mission of the Census Bureau and directly contributes to the successful outcome of censuses and surveys conducted by the Census Bureau. The generic clearance allows the Census Bureau to focus its limited resources on actual operational planning, development of procedures, and implementation of programs to update and improve the geographic and

address information maintained in the MAF/TIGER System.

As part of this renewal request, we will follow the protocol of past generic clearances: We will submit clearance requests at least two weeks before the planned start of each activity that give more exact details, examples of forms and related materials, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted.

The following paragraphs describe the categories of activities to be included under the clearance.

Geographic Support System Initiative (GSS–I)—The GSS–I is an integrated program designed to improve address coverage, obtain continual spatial feature updates, and enhance the quality assessment and measurement for the MTDB. The GSS–I builds on the accomplishments of the last decade's MAF/TIGER Enhancement Program (the MTEP) which redesigned the MAF/TIGER Database (MTDB), improved the positional accuracy of TIGER spatial features, and emphasized quality measurement. The Census Bureau plans on a continual update process for the MAF/TIGER System throughout the decade to support Census Bureau surveys, including the American Community Survey. Major participants are the U.S. Census Bureau with tribal, state, and local governments. The Census Bureau will contact tribal, state, and local governments to obtain files containing their address and spatial data, to explore data exchange opportunities, and share best practices.

Redistricting Data Program—The 2010 Census Redistricting Data Program is established in accordance with the provisions of Title 13 U.S.C. 141(C) and provides the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico the opportunity to specify the small geographic areas for which they wish to receive decennial census population totals for the purpose of reapportionment and redistricting. The law also requires that by April 1 of the year following the decennial census the Secretary of Commerce will furnish State officials or their designee(s) with population counts for standard census tabulation areas (*e.g.* counties, cities, census blocks, and Congressional districts) and if provided by the states, legislative districts and voting districts.

The Census Bureau will conduct Phase 4 and Phase 5 of the 2010 Census Redistricting Data Program. In Phase 4 of the 2010 Redistricting Data Program, states submit new plans for updated congressional and state legislative districts to re-tabulate the 2010 Census data to these new redistricted boundaries. This phase is scheduled for 2012 and into 2013. Changes to congressional and state legislative boundaries that might result from further redistricting will be collected in 2014 and in 2016. Phase 5 of the Redistricting Program is the evaluation of the program and the final recommendations for the 2020 Census.

School District Review Program (SDRP)—The Census Bureau creates special tabulations of decennial census data by school district geography. These tabulations provide detailed demographic characteristics of the nation's public school systems and offer one of the largest single sources of children's demographic characteristics currently available. Information is distributed through the National Center for Education Statistics (NCES).

The SDRP, conducted by the Census Bureau every two years on behalf of the Department of Education, is of vital importance for each state's allocation under Title I of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001, Public Law 107–110. The school district information obtained through this program, along with the 2010 Census population and income data, current population estimates, and tabulations of administrative records data, are used in forming the Census Bureau's estimates of the number of children aged 5 through 17 in low-income families for each school district. These estimates of the number of children in low-income families residing within each school district are the basis of the Title 1 allocation for each school district.

The scope of the SDRP is for state officials to review the Census Bureau's current school district information and to provide the Census Bureau with updates and corrections to the school district names and Federal Local Education Agency (LEA) identification numbers, school district boundaries, and the grade ranges for which a school district is financially responsible. This includes updating unified, secondary, and elementary school districts.

The list above is not exhaustive of all activities that may be performed under this generic clearance. We will follow the approved procedure when submitting any additional activities not specifically listed here.

All activities described above directly support the Census Bureau's efforts to maintain its address and geographic database in partnership with tribal, state, and local governments nationwide. Because tribal, state, and local governments have current knowledge of, and data about, where housing growth and change are occurring in their jurisdictions, their input into the overall development of the address list for the Census Bureau makes a vital contribution. Similarly, those governments are in the best position to work with local geographic boundaries, and they benefit from accurate address and geographic data.

Affected Public: State, local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Sections 16, 141, and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: April 6, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–8672 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioners and three producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil with respect to four producers/exporters of the subject merchandise to the United States. This is the fifth period of review (POR), covering March 1, 2010, through February 28, 2011.

We have preliminarily determined that sales to the United States have been made below normal value (NV), and, therefore, are subject to antidumping duties. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Hector Rodriguez, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on OJ from Brazil.[1] Subsequently, on March 1, 2011, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on OJ from Brazil for the period March 1, 2010, through February 28, 2011.[2]

In accordance with 19 CFR 351.213(b)(2), in March 2011, the Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from three producers/exporters of the subject merchandise: Fischer S.A. Comercio, Industria, and Agricultura (Fischer); Louis Dreyfus Commodities Agroindustrial S.A. (Louis Dreyfus); and Sucocitrico Cutrale, S.A. (Cutrale). In its request for review, Louis Dreyfus claimed that it is the successor-in-interest to a former producer/exporter of OJ, Coinbra Frutesp S.A. (Coinbra Frutesp).

In accordance with 19 CFR 351.213(b)(1), also in March 2011, the Department received requests to conduct an administrative review for Cutrale and Fischer from the petitioners (Florida Citrus Mutual and Citrus World, Inc.) and Southern Gardens Citrus Processing Corporation (Southern Gardens), a domestic interested party. Additionally, in March 2011, Southern Gardens requested that the Department also conduct an administrative review for Coinbra Frutesp and Montecitrus Trading S.A. (Montecitrus).

In April 2011, the Department initiated an administrative review for all five companies (*i.e.,* Cutrale, Coinbra Frutesp, Fischer, Louis Dreyfus, and Montecitrus).[3]

In May 2011, we solicited information from Louis Dreyfus regarding its claim that it is the successor-in-interest to Coinbra Frutesp. Louis Dreyfus supplied this information in the same month. Also in May 2011, we received a statement from Montecitrus that it had no shipments of subject merchandise to the United States during the POR, and we issued questionnaires to Cutrale, Fischer, and Louis Dreyfus.

In May and June 2011, we received responses to section A of the Department's questionnaire (*i.e.,* the section related to general information), as well as responses to sections B and C of the questionnaire (*i.e.,* the sections covering sales in the home market and United States) from Cutrale, Fischer, and Louis Dreyfus. We also received responses from Cutrale and Fischer to section D of the questionnaire (*i.e.,* the section covering cost of production (COP) and constructed value (CV)) in June 2011.

In July 2011, the petitioners filed a company-specific sales-below-cost allegation for Louis Dreyfus. The Department initiated a sales-below-cost investigation for Louis Dreyfus in this month, and we instructed Louis Dreyfus to respond to section D of the Department's questionnaire. *See* the July 29, 2011, memorandum from the team to James Maeder entitled, ''The Petitioners' Allegation of Sales Below the Cost of Production for Louis Dreyfus Commodities Agroindustrial S.A.'' (Louis Dreyfus Cost Investigation Memo). In August 2011, we received Louis Dreyfus' response to section D of the questionnaire.

From August 2011 through March 2012, we issued supplemental sales and cost questionnaires to Cutrale, Fischer, and Louis Dreyfus. We also issued a supplemental successor-in-interest questionnaire to Louis Dreyfus in August 2011. We received responses to these supplemental questionnaires from September 2011 through March 2012.

On October 21, 2011, the Department extended the deadline for the preliminary results of this review until no later than March 30, 2012.[4]

On March 23, 2012, the petitioners filed a targeted dumping allegation against Cutrale and requested that the Department consider this allegation in the event that it determines to apply in this administrative review the Final Modification dumping margin calculation methodology it published on February 14, 2012.[5] [6] Cutrale filed a response to the petitioners' targeting dumping allegation on March 26, 2012.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil,* 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra Frutesp,[7] Cutrale, Fischer, and Montecitrus.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further

[1] *See Antidumping Duty Order: Certain Orange Juice from Brazil,* 71 FR 12183 (Mar. 9, 2006) (*OJ Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 11197 (Mar. 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23546 (Apr. 27, 2011) (*Initiation Notice*).

[4] *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 65496, 65497 (Oct. 21, 2011).

[5] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Final Modification,* 77 FR 8101 (Feb. 14, 2012). (Final Modification).

[6] We note that we did not apply the Final Modification dumping margin calculation methodology for purposes of these preliminary results. Per the Final Modification, the new methodology will be applied in reviews for which the preliminary results are scheduled to be issued more than 60 days after the date of publication of the Final Modification, (*i.e.,* April 16, 2012).

[7] As discussed below, we preliminarily find that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp. See the ''Successor-in Interest'' section of this notice.

manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Successor-in-Interest

In making a normal successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,* 67 FR 58 (Jan. 2, 2002), and *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992). Although no one of these factors is dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (Feb. 14, 1994); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil,* 71 FR 2183 (Jan. 13, 2006).

As noted above, in its request for a review, Louis Dreyfus claimed that it is the successor-in-interest to Coinbra Frutesp. As a result, on May 2, 2011, we requested that Louis Dreyfus address the four factors noted above (*i.e.,* management, production facilities for the subject merchandise, supplier relationships, and customer base) in order to determine whether Louis Dreyfus is indeed the successor-in-interest to Coinbra Frutesp.

On May 24, 2011, Louis Dreyfus submitted its response to the Department's request. In this submission, Louis Dreyfus provided evidence that Coinbra Frutesp Agroinstrial Ltda. (Coinbra Frutesp Ag.), the wholly owned subsidiary of Coinbra Frutesp and producer of subject merchandise, underwent a series of corporate restructurings, including changes to the company's name. According to Louis Dreyfus, these name changes had no effect on the company's operations. Louis Dreyfus explained that there were no significant changes to Coinbra Frutesp Ag's management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure.

On August 22, 2011, we asked further questions and requested additional documentation from Louis Dreyfus to support its statements that the name changes did not affect its management, production facilities, supplier relationships, and customer base. Louis Dreyfus provided this information on September 13, 2011.

Based on our analysis of Louis Dreyfus' May 24, 2011, and September 13, 2011, submissions, we preliminarily find that Coinbra Frutesp Ag's organizational structure, management, production facilities, supplier relationships, and customers have remained largely unchanged from the time of the OJ order. Further, we preliminarily find that Louis Dreyfus operates as the same business entity as Coinbra Frutesp Ag with respect to the production and sale of OJ. Thus, we preliminarily find that Louis Dreyfus is the successor-in-interest to Coinbra Frutesp and, as a consequence, the Department finds Louis Dreyfus' U.S. sales of FCOJ would be subject merchandise in this proceeding.[8] For further discussion, see the March 30, 2012, memorandum to James Maeder, Office Director, from Elizabeth Eastwood, Senior Analyst, entitled, ''Successor-In-Interest Determination for Coinbra Frutesp S.A./Coinbra Frutesp Agroindustrial Ltda. and Louis Dreyfus Commodities Agroindustrial S.A. in the 2010–2011 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil.''

Preliminary Determination of No Shipments

As noted in the ''Background'' section above, Montecitrus indicated that it had no shipments of subject merchandise to the United States during the POR. The Department subsequently confirmed with CBP the no-shipment claim made by Montecitrus. Because the evidence on the record indicates that Montecitrus did not export subject merchandise to the United States during the POR, we preliminarily determine that Montecitrus did not have any reviewable transactions during the POR.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents had been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Montecitrus, and exported by other parties, at the all-others rate. *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (Sept. 17, 2010). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Montecitrus and issue appropriate instructions to CBP based on the final results of the review. *See* the ''Assessment Rates'' section of this notice below.

Comparisons to Normal Value

To determine whether sales of OJ by Cutrale, Fischer, and Louis Dreyfus to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to 19 CFR 351.414(c)(2) and (e)(1), we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

[8] Louis Dreyfus reported making only U.S. sales of NFC during the POR.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cutrale, Fischer, and Louis Dreyfus, and covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of OJ to sales of OJ in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type and organic designation. Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as discussed in the ''Calculation of Normal Value Based on Constructed Value'' section below. *See* section 773(a)(4) of the Act.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's and Fischer's U.S. sales as CEP sales because they were made in the United States by their U.S. affiliates on behalf of the respondents, within the meaning of section 772(b) of the Act.

Regarding Louis Dreyfus, this respondent reported its U.S. sales as export price (EP) transactions because it stated that Louis Dreyfus in Brazil, not its U.S. affiliate, negotiated the sales with the U.S. customer. However, because the document relied upon by Louis Dreyfus to support its claim does not establish the material terms of sale and the U.S. affiliate, Louis Dreyfus Citrus Inc. (LDCI), is identified as the seller on the commercial invoice to the U.S. customer, we are treating all of Louis Dreyfus's U.S. sales as CEP transactions in accordance with our practice.

A. Cutrale

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.,* the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. Additionally, for certain sales made pursuant to futures contracts which were noticed prior to the POR, but were shipped and invoiced during the POR, we adjusted the reported date of sale for these transactions to base it on the invoice date. Where appropriate, we also made adjustments for rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight; U.S. brokerage and handling (offset by customer-specific reimbursements); U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses; and U.S. warehousing expenses. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject merchandise, in accordance with our practice.[9] We also capped U.S. customs duty reimbursements, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *Id.*

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* commissions, imputed credit expenses, and repacking expenses (offset by pallet and drum revenue)), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We capped U.S. pallet revenue and drum revenue by the amount of repacking expenses, in accordance with our practice. *Id.* In addition, we recalculated inventory carrying costs using the total manufacturing costs, adjusted as noted in the ''Calculation of Cost of Production'' section of this notice, below.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

For further discussion of the changes made to Cutrale's reported U.S. sales data, see the March 30, 2012, memorandum from Blaine Wiltse, Senior Analyst, to the File, entitled ''Calculation Adjustments for Sucocitrico Cutrale Ltda. for the Preliminary Results'' (Cutrale Calculation Memo).

B. Fischer

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight expenses (offset by bunker fuel adjustments); marine insurance expenses; U.S. brokerage and handling expenses; U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback); U.S. inland freight expenses; and U.S. warehousing expenses. We capped reimbursements for U.S. customs duties, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *See 2005–2007 OJ from Brazil* at Comment 7; *2007–2008 OJ from*

[9] *See, e.g, Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 46584 (Aug. 11, 2008) (*2005–2007 OJ from Brazil*), and accompanying Issues and Decision Memorandum at Comment 7; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review,* 74 FR 40167 (Aug. 11, 2009) (*2007–2008 OJ from Brazil*), and accompanying Issues and Decision Memorandum at Comment 3; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999 (Aug. 18, 2010) (*2008–2009 OJ from Brazil*), and accompanying Issues and Decision Memorandum at Comment 2; and *Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 76 FR 19315, 19318 (Apr. 7, 2011) (*2009–2010 OJ from Brazil Preliminary Results*), unchanged in *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination,* 76 FR 50176 (Aug. 12, 2011) (*2009–2010 OJ from Brazil*).

Brazil at Comment 3; and *2008–2009 OJ from Brazil* at Comment 2. We also capped bunker fuel adjustments by the amount of ocean freight expenses incurred on the subject merchandise, in accordance with our practice. *Id.* Further, we determined that the international freight expenses provided by Fischer's affiliated freight provider were not at arm's length. Therefore, for all sales shipped by Fischer's affiliate, we assigned the international freight rate charged by Fischer's affiliate to an unaffiliated party to restate them on an arm's-length basis. For further discussion, see the March 30, 2012, memorandum to the file from Hector Rodriguez, Analyst, entitled ''Calculation Adjustments for Fischer S.A. Comercio, Industria, and Agricultura for the Preliminary Results'' (Fischer Calculation Memo).

In accordance with sections 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* additional processing expenses, imputed credit expenses, and repacking expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

C. Louis Dreyfus

On February 9, 2012, we issued a supplemental questionnaire to Louis Dreyfus in which we requested that Louis Dreyfus provide commercial invoices and ocean freight invoices for all exports of FCOJ or NFC from Brazil by its affiliated exporter, Louis Dreyfus Citrus Trading Ltda. (Louis Dreyfus Trading), to the United States during the month of March. In its response, Louis Dreyfus stated that it did not have any other sales of subject merchandise to the United States during March 2011 (*i.e.,* outside the POR). Because (1) Louis Dreyfus did not respond directly to the Department's question; and (2) there appears to exist contradictory information [10] on the record of this proceeding, we intend to issue an additional supplemental questionnaire to Louis Dreyfus to allow it to address this issue. We will consider this information for purposes of our final results. However, if Louis Dreyfus fails to respond adequately to this subsequent request for information, for purposes of the final results, we may consider whether the application of facts available is warranted, pursuant to section 776(a) of the Act.

Regarding the U.S. sales that Louis Dreyfus did report, Louis Dreyfus used the date of an email order confirmation from its U.S. customer as the date of sale for its U.S. sales. The Department's regulations at 19 CFR 351.401(i) provide that the Department may use a date other than the date of invoice if the different date better reflects the date on which the material terms of sale are established. In this instance, we find that the essential terms of sale are not set as of the date of the email between the parties because the quantity and entry date changed after that date. Therefore, we have used as the date of sale the date that Louis Dreyfus shipped its merchandise from Brazil because this date is earlier than the date LDCI issued the commercial invoice and better reflects the date on which the material terms of sale were established, in accordance with our practice [11] and 19 CFR 351.401(i). For further discussion of this issue, see the March 30, 2012, memorandum from Elizabeth Eastwood, Senior Analyst, to the File, entitled ''Calculation Adjustments for Louis Dreyfus Commodities Agroindustrial S.A. for the Preliminary Results'' (Louis Dreyfus Sales Calculation Memo).

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight expenses; foreign brokerage and handling expenses; ocean freight expenses; U.S. brokerage and handling expenses (offset by customer-specific reimbursements); and U.S. customs duties (offset by customs duty reimbursements). We included certain U.S. brokerage and handling expenses for which Louis Dreyfus was not reimbursed by its U.S. customer but were omitted from the U.S. sales listing. *See* Louis Dreyfus Sales Calculation Memo for further discussion. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject merchandise, in accordance with our practice. *See, e.g., 2005–2007 OJ from Brazil* at Comment 7; *2007–2008 OJ from Brazil* at Comment 3; and *2008–2009 OJ from Brazil* at Comment 2. We also capped U.S. customs duty reimbursements by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *Id.*

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* imputed credit expenses), and indirect selling expenses (including other indirect selling expenses). Because Louis Dreyfus did not report indirect selling expenses for LDCI, we calculated these expenses using the audited financial statements for LDCI's parent company contained in Louis Dreyfus' May 24, 2011, response. For further discussion of this calculation, see the Louis Dreyfus Sales Calculation Memo. We intend to issue an additional supplemental questionnaire to request that Louis Dreyfus provide a calculation of LDCI's indirect selling expenses. We will consider this information for purposes of our final results. However, if Louis Dreyfus fails to respond adequately to this subsequent request for information, for purposes of the final results, we may consider whether the application of facts available is warranted, pursuant to section 776(a) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Louis Dreyfus and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

[10] Because this contradictory information is proprietary in nature, we cannot discuss it here.

[11] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review,* 72 FR 71357 (Dec. 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part,* 72 FR 25253, 25256 (May 4, 2007), unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part,* 72 FR 62630 (Nov. 6, 2007); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for each respondent was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id., see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[12] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States,* 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa,* 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (*i.e.,* sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: sales forecasting, order input/processing, freight and delivery, packing, quality guarantees, and maintaining inventory at the port of exportation.

Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and 4) warranty and technical support. *See 2008–2009 OJ from Brazil* at Comment 7; and *Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 9991, 9996 (Mar. 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409 (July 13, 2009). Based on these selling function categories, we find that Cutrale performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities did not differ within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (*i.e.,* direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales and found that Cutrale performed the following selling functions: sales forecasting, direct sales personnel, order input/processing, advertising, freight and delivery, packing, quality guarantees, after-sales services, and inventory maintenance at the factory. Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, and the selling activities did not differ within this channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: (1) Cutrale performed limited, general image advertising in the home market; (2) Cutrale entered orders into the company's computer system for home market sales based on orders placed by customers, while it generated sales documents for sales to its U.S. affiliate based on a general shipping schedule; (3) Cutrale has direct sales personnel assigned to servicing its home market customers while employing an export sales office whose staff is assigned to service all export market customers, including U.S. customers; (4) Cutrale provided limited technical assistance and after-sale services to home market customers during the POR; and (5) Cutrale provides quality guarantees directly to its home market customers, while it provides similar guarantees for its U.S. sales through its U.S. affiliate.

According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Therefore, because we determine that substantial differences in Cutrale's selling activities do not exist

[12] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible.

across markets, we determine that sales to the U.S. and home markets during the POR were made at the same LOT. As a result, neither a LOT adjustment nor a CEP offset is warranted for Cutrale. This determination is consistent with findings in previous reviews.[13] *See, e.g., 2005–2007 OJ from Brazil* at Comment 5; *2007–2008 OJ from Brazil* at Comment 2; *2008–2009 OJ from Brazil* at Comment 7; and *2009–2010 OJ from Brazil Preliminary Results,* 76 FR at 19319, unchanged in *2009–2010 OJ from Brazil.*

2. Louis Dreyfus

Louis Dreyfus made CEP sales [14] through one channel of distribution in the United States (*i.e.,* sales via an affiliated reseller) and, thus, the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Louis Dreyfus performed the following selling functions: customer contact and price negotiation; order input/processing; employing direct sales personnel; providing guarantees; providing inventory maintenance; and arranging for freight. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Louis Dreyfus performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Louis Dreyfus reported that it made sales through two channels of distribution to two types of customers (*i.e.,* large soft drink manufacturers/industrial juice producers and small soft drink manufacturers). However, we find that the selling activities it performed did not vary significantly by the channel of distribution or the type of customer. Therefore, we have considered the selling functions for all customers in the aggregate. We examined the selling activities performed for home market sales, and found that Louis Dreyfus performed the following selling functions:[15] customer contact and price negotiation; order input/processing; employing direct sales personnel; providing guarantees; and packing. In addition, for certain home market sales, Louis Dreyfus also indicated that it performed sales forecasting and inventory maintenance. Accordingly, based on the selling function categories listed above, we find that Louis Dreyfus performed sales and marketing and inventory maintenance and warehousing for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Louis Dreyfus.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither a LOT adjustment nor a CEP offset is warranted for Louis Dreyfus.

3. Fischer

Because all of Fischer's home market sales failed the cost test during the POR, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil,* 69 FR 47081 (Aug. 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil,* 69 FR 76910 (Dec. 23, 2004). In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(2) of this section on the basis of sales of the foreign like product by the producer or exporter. We based the selling expenses and profit for Fischer on the weighted-average selling expenses incurred and profits earned by the other respondents in the proceeding (*i.e.,* Cutrale and Louis Dreyfus). Thus, as described below, we attempted to determine the LOT of the sales from which we derived selling expenses and profit for CV.

Fischer reported that it made CEP sales through one channel of distribution in the United States (*i.e.,* sales via an affiliated reseller) and, thus, the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities did not differ within this channel, we preliminarily determine that there is one LOT in the U.S. market.

As noted above, based on the four selling function categories, we find that Cutrale performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for its home market sales. In addition, we find that Louis Dreyfus performed sales and marketing and inventory maintenance and warehousing for its home market sales. Because Cutrale and Louis Dreyfus did not perform the same selling functions in the home market, we could not determine the LOT of the sales from which we derived selling expenses and profit for CV. As a result, we could not compare the CEP LOT to the home market LOT. Therefore, we did not make a LOT adjustment or CEP offset to NV for Fischer. *See* the ''Calculation of Normal Value Based on Constructed Value'' section of this notice, below.

C. Affiliated-Party Transactions and Arm's-Length Test

During the POR, Cutrale and Louis Dreyfus made sales in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the

[13] This finding is also consistent with Cutrale's statement that there were no significant differences between the sales process that it performed during the current POR and that which it performed in both markets during the previous segment of the proceeding. *See* Cutrale's supplemental section A response, submitted on September 15, 2011, at page 1.

[14] Louis Dreyfus reported that its U.S. sales were EP, not CEP, sales. However, as noted in the ''Constructed Export Price'' section of this notice, above, we have reclassified Louis Dreyfus' U.S. sales as CEP sales for purposes of the preliminary results.

[15] In its selling functions chart, Louis Dreyfus indicated that it performed freight and delivery for certain home market sales; however, it did not report these expenses for any home market sales. Therefore, we are not considering this selling function for purposes of our analysis.

sales to the affiliates were made at arm's-length prices, we compared the unit prices of sales to the affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same LOT, we determined that the sales made to the affiliated party were at arm's-length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* section 771(15) of the Act and 19 CFR 351.102(b).

D. Cost of Production Analysis

We found that Cutrale and Fischer made sales below the COP in the 2008–2009 administrative review, the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded. *See 2008–2009 OJ from Brazil.* Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current POR.

Moreover, on July 18, 2011, the petitioners alleged that Louis Dreyfus made sales in the home market, during the POR that were below the COP. Based on our analysis of the allegation made by the petitioner, we found that Louis Dreyfus' home market sales which fell below the COP were representative of the broader range of sales which may be used as a basis for NV. Therefore, we determined, on this basis as well, that there were reasonable grounds to believe or suspect that Louis Dreyfus' sales of OJ in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Louis Dreyfus' sales were made at prices below its COP. *See* Louis Dreyfus Cost Investigation Memo.

We examined the cost data for Cutrale, Fischer, and Louis Dreyfus and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data, adjusted as described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (*see* ''Test of Comparison Market Sales Prices'' section, below, for treatment of home market selling expenses).

a. Cutrale

The Department relied on the COP data submitted by Cutrale in its most recently submitted cost database for the COP calculation, except in the following instances:

i. We used Cutrale's home market actual brix level data to adjust Cutrale's home market costs to ensure that these are stated on a pounds-solid basis using actual brix; and

ii. We revised Cutrale's calculation of its G&A expense rate to exclude from the numerator of the calculation the change in fair value of biological assets (*i.e.,* orange trees). We intend to issue an additional supplemental questionnaire to Cutrale to allow it to provide further information on the valuation of these assets.

For further discussion of this adjustment, see the Cutrale Calculation Memo.

b. Fischer

The Department relied on the COP data submitted by Fischer in its first cost database, rather than its cost database submitted in December 2011, because Fischer made certain unexplained adjustments to its reported costs. We intend to issue an additional supplemental questionnaire to Fischer to allow it to provide further information regarding these adjustments. We adjusted Fischer's reported cost data as follows:

i. We adjusted Fischer's financial expense calculation to disallow long term interest income and to include the total amount of Fischer's realized hedge results as recorded in Fischer's income statement.

ii. We revised Fischer's G&A expense ratio calculation to include ''other'' operating expenses related to provisions and disposal of fixed assets.

iii. In accordance with the transactions disregarded rule (*i.e.,* section 773(f)(2) of the Act) we adjusted Fischer's cost of manufacturing (COM) to reflect the market value for the sale of certain by-products to its affiliated trade company.

For further discussion of these adjustments, see the Fischer Calculation Memo.

c. Louis Dreyfus

The Department relied on the COP data submitted by Louis Dreyfus in its most recently submitted cost database for the COP calculation, except in the following instances:

i. We revised the denominator of Louis Dreyfus' reported G&A expense ratio to reflect the company-wide fiscal year 2010 cost of sales reflected on Louis Dreyfus' audited income statement. We adjusted the cost of sales for by-product revenue, packing expenses, and the difference between Louis Dreyfus' growing season costs reported to the Department and the growing season costs recorded in the company's normal books and records. To calculate these adjustments, we determined the relative percentage of each type of expense or adjustment to Louis Dreyfus' fiscal year 2010 cost of sales. We then applied the percentages to the parent company's fiscal year 2010 cost of sales to determine the adjustment to the denominator.

ii. We revised the numerator of Louis Dreyfus' reported financial expense ratio to include only that portion of the claimed short-term interest income offset that the record indicates was generated by short-term interest bearing assets related to working capital. We also revised the denominator of the financial expense ratio (*i.e.,* Louis Dreyfus' parent company's cost of sales) to reflect the same adjustments made to G&A (*i.e.,* by-product revenue, packing expenses, and growing season cost differences), as detailed above.

For further discussion of these adjustments, see the March 30, 2012, memorandum from LaVonne Clark to Neal M. Halper entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Louis Dreyfus Citrus Inc. and Louis Dreyfus Commodities Agroindustrial S.A.''

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale's and Louis Dreyfus', and all of Fischer's, home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis. We used the remaining sales as the basis for determining NV for Cutrale and Louis Dreyfus in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no home market sales in the ordinary course of trade, we compared CEPs to CV in accordance with section 773(a)(4) of the Act. *See* the ''Calculation of Normal Value Based on Constructed Value'' section below.

E. Calculation of Normal Value Based on Comparison Market Prices

1. Cutrale

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments and interest revenue, in accordance with 19 CFR 351.401(c). We have treated Cutrale's home market interest revenue as a price adjustment, in accordance with 19 CFR 351.401(c) and 351.102(b). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act.

In addition we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. We recalculated Cutrale's home market credit expenses to base the calculation on the gross unit price, inclusive of home market interest revenue, but net of taxes and billing adjustments. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

We recalculated home market inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the ''Calculation of Cost of Production'' section of this notice, above. For further discussion of these adjustments, see the Cutrale Calculation Memo.

We deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

2. Louis Dreyfus

We calculated NV based on delivered prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act.

In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for all of Fischer's sales and for certain sales made by Louis Dreyfus, we based NV on CV because there were no home market sales in the ordinary course of trade that could be properly compared to those U.S. sales.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expense (including financing expenses), profit, and U.S. packing costs. We calculated respondents' materials, G&A, and financing costs as described in the ''Cost of Production Analysis'' section, above.

For comparisons to CEP, we deducted from CV the respondents' weighted-average home market direct selling expenses.

Because Fischer did not have home market sales in the ordinary course of trade, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Fischer does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Alternative (ii) of section 773(e)(2)(B) of the Act allows for the Department to use the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for SG&A expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. Further, because there are two other respondents in this administrative review, the Department is applying alternative (ii) and has based Fischer's CV selling expenses and profit rate on the weighted average of the data of Cutrale and Louis Dreyfus. For further discussion, see the Fischer Calculation Memo.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2010, through February 28, 2011, as follows:

Manufacturer/exporter	Percent margin
Sucocitrico Cutrale, S.A.	2.81
Fischer S.A. Comercio, Industria, and Agricultura	8.73
Louis Dreyfus Commodities Agroindustrial S.A.	22.03
Montecitrus Trading S.A.	(*)

* No shipments or sales subject to this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in the case briefs and rebuttals, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis. See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of NFC, and for FCOJM produced and/or exported by Cargill Citrus Limitada will continue to be 16.51 percent, the all-others rate made effective by the LTFV investigation. *See OJ Order,* 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–8381 Filed 4–10–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan for the period May 1, 2010, through April 30, 2011.[1] In *Certain Polyester Staple Fiber From Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 4543 (January 30, 2012) we extended the period of time for issuing the preliminary results by 85 days to April 25, 2012.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of April 25, 2012, because we require additional time to analyze responses with respect to the respondent's reported quarterly cost of production.[2] Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are further extending the time period for issuing the preliminary results of this review by an additional 35 days to May 30, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 3, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–8482 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 37781 (June 28, 2011).

[2] Additionally, the petitioners requested a 35 day extension in order to review the voluminous response data provided by Far Eastern New Century Corporation in this administrative review. See the petitioners' March 23, 2012, letter at 2.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

At the request of ArcelorMittal Tubular Products Roman S.A. (AMTP), Romanian producer and exporter of the subject merchandise, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania for the period August 1, 2010, through July 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 61076 (October 3, 2011). The preliminary results of this review are currently due no later than May 2, 2012.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested. If it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because we have, subsequent to receipt of AMTP's questionnaire responses, initiated a sales-below-cost investigation based upon the allegation of the petitioner, U.S. Steel. *See* the memorandum to Susan Kuhbach dated February 24, 2012. We are still in the process of analyzing AMTP's response to section D of our questionnaire and it is not practicable to do this, issue a supplemental questionnaire, and analyze the supplemental response (and issue any further supplemental questionnaires, as necessary) before the current deadline. Therefore, we are extending the time period for issuing the preliminary results of this review by 105 days until August 15, 2012.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: April 5, 2012.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–8747 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–941]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 11, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we have made changes to the margin calculations for the final results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review (''POR'') March 5, 2009, through August 31, 2010.[2]

[1] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results,* 76 FR 62765 (October 11, 2011) (''*Preliminary Results*'').

[2] As explained in the *Preliminary Results,* the abbreviated POR for oven racks, a subset of subject merchandise, is September 9, 2009, through August 31, 2010. *See Preliminary Results,* 76 FR at 62766.

DATES: *Effective Date:* April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2010, the Department initiated an administrative review of certain kitchen appliance shelving and racks from the PRC for the period March 5, 2009, through August 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010) (''*Initiation''*).[3]

On November 7, 2011, Guangdong Wireking Housewares and Hardware Co., Ltd. (''Wireking''), a mandatory respondent in this review, and Petitioners submitted additional surrogate value (''SV'') information. The Department set the deadline for interested parties to submit case briefs and rebuttal briefs to January 6, 2012, and January 11, 2012, respectively.[4] On January 6, 2012, New King Shan (Zhu Hai) Co., Ltd. (''NKS''), a mandatory respondent in this review, Wireking, and Petitioners each filed case briefs. On January 11, 2012, NKS and Wireking filed rebuttal briefs. On January 12, 2012, Petitioners filed a rebuttal brief, one day after the established deadline. In this instance, to ensure full consideration of comments made by all parties, the Department has, in its discretion, accepted Petitioners' rebuttal brief.[5] [6]

The Department did not hold a public hearing, pursuant to 19 CFR 351.310(d), as it did not receive any hearing requests from interested parties.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the ''Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review,'' dated concurrently with this notice (''Decision Memo''). A list of the issues which parties raised and to which we respond in the Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, main Commerce building, Room 7046. In addition, a complete version of the Decision Memo is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic versions of the memorandum are identical in content.

Scope of the Order

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (''certain kitchen appliance shelving and racks'' or ''the merchandise under order''). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

—Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or

—Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or

—Side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or

—Subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under the order is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under this order may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, 8516.90.8000, 7321.90.6040, 8516.90.8010 and 8419.90.9520. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to certain SVs and the margin calculations for Wireking and NKS in the final results. Specifically, we have revised the surrogate financial ratios. *See* Decision Memo at Comment 2.a and Final SV Memo at 2–3.[7] We have also corrected

[3] Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively, ''Petitioners'') initially requested that the Department initiate an administrative review of ten companies; however, we required additional information concerning why, pursuant to 19 CFR 351.213(b)(1), Petitioners requested a review of five of these companies. *See Initiation,* 75 FR at 66352. Accordingly, the Department postponed initiation of this administrative review with respect to five companies requested by Petitioners. *See id.,* and *Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction,* 75 FR 69054 (November 10, 2010). After reviewing additional information placed on the record of this administrative review by Petitioners, we determined that, for three of the five companies, Petitioners did not provide any reason, other than alleged transshipment, for initiation; therefore, we declined to initiate a review for Asia Pacific CIS (Thailand) Co., Ltd., Taiwan Rail Company, and King Shan Wire Co., Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 73036, 73039 (November 29, 2010). However, we did determine that it was appropriate to initiate this review with respect to two additional companies originally requested by Petitioners: Asia Pacific CIS (Wuxi) Co., Ltd.; and Hengtong Hardware Manufacturing (Huizhou) Co., Ltd. *See id.*

[4] *See* Memorandum to The File, from Kabir Archuletta, Case Analyst, Office 9, Re: Case Brief Schedule, dated December 20, 2011.

[5] *See* Memorandum to The File, from Katie Marksberry, Case Analyst, Office 9, Re: Petitioners' Rebuttal Brief, dated January 12, 2012.

[6] On January 13, 2012, the Department received comments from NKS citing the Department's past practice and questioning the acceptance of Petitioners' rebuttal brief. On January 17, 2012, the Department received comments from Wireking also seeking rejection of Petitioners' rebuttal brief. On January 18, 2012, Petitioners submitted comments to the Department requesting that the Department reject the comments submitted by NKS and Wireking as containing new factual information. On January 20, 2012, the Department sent Wireking a letter rejecting its submission for containing untimely filed new factual information. On January 24, 2012, Wireking resubmitted its comments without inclusion of that new factual information.

[7] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, Case Analyst, Office 9, Re: First Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Surrogate Values for the Final Results, dated concurrently with this notice (''Final SV Memo'').

an error in the *Preliminary Results* alleged by NKS. *See* Decision Memo at Comment 3.a. For all changes to the margin calculations, *see* Decision Memo and the company specific analysis memoranda.[8]

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded this review with respect to Hengtong Hardware Manufacturer (Huizhou) Co., Ltd. (''Hengtong Hardware'') because the Department determined that it had no shipments of subject merchandise to the United States during the POR.[9] Subsequent to the *Preliminary Results,* no information was submitted on the record indicating that Hengtong Hardware made sales to the United States of subject merchandise during the POR and no party provided written arguments regarding this issue. Thus, there is no basis for the Department to reconsider its decision and in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to Hengtong Hardware.[10]

NKS Affiliation/Single Entity

In the *Preliminary Results,* the Department found NKS affiliated with certain related entities, pursuant to sections 771(33)(A), (E) and (F) of the Tariff Act of 1930, as amended (''the Act''), based on ownership and common control, in accordance with our determination in the *LTFV Investigation Final.*[11] For these final results, based on the evidence presented in NKS's questionnaire responses, we find that NKS and one of its affiliated entities should be treated as a single entity for the purposes of this administrative review. This finding is based on our determination that NKS and its affiliated entity are involved in the export of subject merchandise sold by NKS and that a significant potential for manipulation of price or production exists between these entities. *See* Decision Memo at Comment 3.b.[12]

Separate Rates

In our *Preliminary Results,* we determined that the following companies met the criteria for separate rate status: Wireking, NKS, and Hangzhou Dunli Import & Export Co., Ltd.[13] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find that the companies listed above meet the criteria for a separate rate.

The separate rate is determined based on the calculated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available (''AFA''). In this administrative review, one mandatory respondent, Wireking, has a calculated weighted-average antidumping margin which is above *de minimis* and NKS, the other mandatory respondent has a calculated margin which is zero. Therefore, because there is only one weighted-average antidumping margin calculated for these final results that is neither zero, *de minimis,* nor based entirely on AFA, we have assigned Wireking's margin to the companies not selected for individual examination.[14]

The PRC-Wide Entity and Use of Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Asia Pacific CIS (Wuxi) Co., Ltd., and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia), companies upon which the Department initiated administrative reviews that have not been rescinded, did not submit either a separate rate application or certification.[15] In addition, Jiangsu Weixi Group Co. (''Weixi''), was initially selected as a mandatory respondent and did not respond to the Department's antidumping duty questionnaire.[16] Therefore, because Weixi did not cooperate with the Department's request for information, and Asia Pacific CIS (Wuxi) Co., Ltd., and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia) did not demonstrate their eligibility for separate

[8] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, Re: Analysis Memorandum for the Final Results of the First Antidumping Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: New King Shan (Zhu Hai) Co., Ltd., dated concurrently with this notice (''NKS Analysis Memo''), and Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, Case Analyst, Office 9, Re: Analysis Memorandum for the Final Results of the First Antidumping Duty Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Guandong Wireking Housewares and Hardware Co., Ltd., dated concurrently with this notice (''Wireking Analysis Memo'').

[9] *See Preliminary Results,* 76 FR at 62767.

[10] *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008).

[11] *See Preliminary Results,* 76 FR at 62767; *see also* Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, RE: First Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliations of New King Shan (Zhu Hai) Co., Ltd., dated September 30, 2011, and *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009) (''*LTFV Investigation Final*''), amended by *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China:* Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009) (''*LTFV Investigation Amended Final*'').

[12] While NKS's affiliated entity is not a producer of subject merchandise, where companies are affiliated and there exists a significant potential for manipulation of prices and/or export decisions, the Department has found it appropriate to treat those companies as a single entity. *See Hontex Enterprises, Inc. v. United States,* 248 F. Supp. 2d 1323, 1343 (CIT 2003). In this case, not only is NKS's affiliated entity an exporter of subject merchandise, but it is an intermediary for all transactions of subject merchandise between NKS and its unaffiliated U.S. customer(s). Due to the proprietary nature of this issue, *see* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, RE: First Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliations of New King Shan (Zhu Hai) Co., Ltd. for the Final Results, dated concurrently with this notice.

[13] *See Preliminary Results,* 76 FR at 62769.

[14] *See, e.g., Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379, 16381–82 (March 23, 2011); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349, 11350 n.3 (March 17, 2009).

[15] *See Preliminary Results,* 76 FR at 62769.

[16] *See Id.*

rate status in a timely manner, we have determined it is appropriate to consider these companies as part of the PRC-wide entity.[17]

The PRC-wide entity did not respond to our requests for information. Because the PRC-wide entity did not respond to our requests for information, we find it necessary under section 776(a)(2) of the Act to use facts available as the basis for these final results. We further find that the PRC-wide entity—consisting of Weixi, Asia Pacific CIS (Wuxi) Co., Ltd., and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia)—failed to respond to the Department's requests for information and, therefore, did not cooperate to the best of its ability. Therefore, because the PRC-wide entity did not cooperate to the best of its ability in the proceeding, the Department finds it necessary to use an adverse inference in making its determination, pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. Because of the PRC-wide entity's failure to cooperate in this administrative review, we have assigned the PRC-wide entity an AFA rate of 95.99 percent, which is the PRC-wide rate determined in the *LTFV Investigation Amended Final* and the only rate ever determined for the PRC-wide entity in this proceeding.[18]

The Department determines for these final results that this information is the most appropriate from the available sources to effectuate the purposes of AFA, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.[19] The Department's reliance on the PRC-wide rate from the original investigation to determine an AFA rate is subject to the requirement to corroborate secondary information.[20]

Corroboration of Adverse Facts Available

Section 776(c) of the Act requires that, where the Department relies on secondary information in selecting AFA, the Department corroborate such information to the extent practicable. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[21]

The Department considers the AFA rate calculated for the current review to be both reliable and relevant. On the issue of reliability, the Department corroborated the AFA rate in the *LTFV Investigation Amended Final.*[22] No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico,* the Department disregarded the highest margin in that case as best information available (the predecessor to AFA) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.[23] Since the investigation, the Department has found no other corroborating information available in this case, and received no comments from interested parties as to the relevance or reliability of that secondary information. Based upon the above, for these final results, the Department finds that the rate derived from the Petition and assigned to the PRC-wide entity in the *LTFV Investigation Amended Final* is corroborated to the extent practicable for purposes of assigning the PRC-wide entity the same 95.99 percent rate as AFA in this administrative review.

Export Subsidy Adjustment

Section 772(c)(1)(C) of the Act states that the price used to establish export price or constructed export price (''CEP'') ''shall be increased by the amount of any countervailing duty imposed on the subject merchandise * * * to offset an export subsidy.'' [24] The Department determined in its final results of the companion countervailing duty administrative review that NKS and Wireking's merchandise benefited from export subsidies.[25] Therefore, because Wireking and NKS both reported their POR sales on a CEP basis,[26] we have increased each company's CEP for countervailing duties imposed that are attributable to export subsidies, where appropriate.[27]

[17] *See Id.,* at 62770.

[18] *See LTFV Investigation Amended Final,* 74 FR at 46973.

[19] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[20] *See* section 776(c) of the Act and the ''Corroboration of Facts Available'' section below.

[21] *See* SAA at 870; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[22] *See LTFV Investigation Amended Final,* 74 FR at 46973.

[23] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (''*Fresh Cut Flowers from Mexico''*).

[24] *See e.g., Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review,* 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

[25] *See* Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review, signed concurrently with this notice.

[26] *See Preliminary Results,* 76 FR at 62773–74.

[27] *See* NKS Analysis Memo and Wireking Analysis Memo.

Final Results of Review

The Department has determined that the following final dumping margins exist for the period March 5, 2009, through August 31, 2010:

Exporter	Margin (percent)
Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.)[28]	7.89
New King Shan (Zhu Hai) Co., Ltd	0.00
Hangzhou Dunli Import & Export Co., Ltd	7.89
PRC-Wide Entity[29]	95.99

Assessment

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer (or customer)-specific assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above *de minimis.*

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 206.00 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

General Issues

Comment 1: Zeroing
Comment 2: Surrogate Values
a. Surrogate Financial Ratios
b. Brokerage and Handling

Company Specific Issues

Comment 3: Issues Regarding NKS
a. Conversion of Gross Unit Price
b. Inclusion of Affiliate's Name in Cash Deposit and Liquidation Instructions

[FR Doc. 2012–8736 Filed 4–10–12; 8:45 am]

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[28] In the *LTFV Investigation Final,* the Department found that Wireking was a single entity with Company G (the name of this company is business proprietary). *See* Wireking Analysis Memo. The information placed on the record of this review demonstrates that there have not been any changes to the ownership structure. Therefore, we continue to find Wireking and Company G to constitute a single entity.

[29] The PRC-wide entity includes Weixi, Asia Pacific CIS (Wuxi) Co., Ltd., and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia), as well as any company that does not have a separate rate.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests, the Department of Commerce is conducting an administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC). The period of review is March 1, 2010, through February 28, 2011. We have preliminarily determined that Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong), made sales of subject merchandise at or above normal value during the period of review and invite interested parties to comment on these preliminary results. In addition, we are rescinding this administrative review with respect to 29 other companies.

DATES: *Effective Date:* April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Angelica Mendoza,

AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3931 and (202) 482–3019, respectively.

Background

On March 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on glycine in the **Federal Register**.[1] Baoding Mantong requested a review of its own sales on March 23, 2011, and GEO Specialty Chemicals, Inc. (GEO), a domestic interested party, requested a review of the sales of Baoding Mantong and 29 other firms on March 31, 2011. Based on these requests, we initiated a review of the 30 companies on April 27, 2011.[2] On July 1, 2011, however, GEO withdrew its request for review of all companies except that of Baoding Mantong.

Baoding Mantong filed timely responses to our original antidumping questionnaire and supplemental questionnaires. GEO filed comments on Baoding Mantong's submissions and, on July 25, 2011, GEO filed a request that we verify the responses.

On November 23, 2011, we extended the due date for the preliminary results of review by 120 days to March 30, 2012.[3]

Verification

We conducted a verification of Baoding Mantong's responses from February 6 through February 10, 2012. We used standard verification procedures, including examination of relevant accounting and production records, as well as source documentation provided by the respondent. *See* Memorandum to the File regarding ''Verification of the Sales and Factors-Of-Production Responses of Baoding Mantong Fine Chemistry Co., Ltd., in the Antidumping Administrative Review of Glycine from the People's Republic of China,'' dated March 30, 2012 (Verification Report).

Partial Rescission

Under 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws it at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request.

Because GEO withdrew its request for review of 29 companies on July 1, 2011, within 90 days of publication of our notice of initiation on April 27, 2011, we find GEO's withdrawal to be timely. Thus, we are rescinding this review with respect to the following companies: (1) A&A Pharmachem Inc., (2) Advance Exports, (3) AICO Laboratories Ltd., (4) Avid Organics, (5) Beijing Onlystar Technology Co. Ltd., (6) China Jiangsu International, (7) Chiyuen International Trading Ltd., (8) E-Heng Import & Export Co., Ltd., (9) General Ingredient Inc., (10) Hebei Donghua Chemical General Corporation, (11) Hebei Donghua Jiheng Fine Chemical, (12) H.K. Tangfin Chemicals Co., Ltd., (13) Jizhou City Huayang Chemical Co., Ltd., (14) Kissner Milling Co. Ltd., (15) Long Dragon Company Ltd., (16) Nantong Dongchang Chemical Industry Corp., (17) Nutracare International, (18) Paras Intermediates Pvt. Ltd., (19) Qingdao Samin Chemical Co., Ltd., (20) Ravi Industries, (21) Salvi Chemical Industries, (22) Shaanxi Maxsun Trading Co., Ltd., (23) Shijiazhuang Green Carbon Products Co., Ltd., (24) Showa Denko K.K., (25) Sinochem Qingdao Company, Ltd., (26) Sino-Siam Resources Imp. & Exp. Co., Ltd., (27) Tianjin Tiancheng Pharmaceutical Company, (28) Universal Minerals, and (29) Yuki Gosei Kogyo Co., Ltd.

Scope of the Order

The product covered by this antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). This proceeding includes glycine of all purity levels.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. *See Notice of Scope Rulings,* 62 FR 62288 (November 21, 1997).

Non-Market-Economy Country Status

The Department considers the PRC to be a non-market-economy (NME) country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[4]

Separate Rates

A designation of a country as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. We maintain that there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review involving an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

To establish separate-rate eligibility, the Department requires entities, for which a review was requested and that were assigned separate rates in the most recent segment of the proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate unless there were changes to a company's corporate structure, acquisitions of new companies or facilities, or changes to their official company name. *Initiation* at 23546. In the current review, Baoding Mantong filed a response to Section A

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 11197 (March 1, 2011).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011) (*Initiation*).

[3] *See Glycine From the People's Republic of China; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 72388 (November 23, 2011).

[4] *See, e.g., Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,* 71 FR 26736, 26739 (May 8, 2006) (unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006)).

of the antidumping questionnaire in which it described recent changes in its corporate structure and ownership and responded to all items concerning the assignment of a separate rate. In doing so, it provided company-specific information and stated that it met the criteria for the assignment of a separate rate.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The information provided by Baoding Mantong supports a finding of a *de jure* absence of governmental control over its export activities based on: (1) An absence of restrictive stipulations associated with the exporter's business license and certificate of approval; and (2) the legal authority on the record decentralizing control over Baoding Mantong, including the provisions of the relevant PRC law. Furthermore, no party submitted information to the contrary. Thus, we preliminarily find an absence of *de jure* control.

Absence of De Facto Control

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *Sparklers,* 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544–45, n.3 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence provided by Baoding Mantong supports a preliminary finding of *de facto* absence of government control based on the following: (1) Its export price is not set by or subject to the approval of a governmental agency; (2) the respondent has authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. Based on this information, the Department preliminarily finds that there is an absence of *de facto* governmental control over the export activities of Baoding Mantong.

Therefore, given the findings that the company operates free of *de jure* and *de facto* governmental control, we preliminarily determine that Baoding Mantong satisfies the criteria for a separate rate established in *Silicon Carbide* and *Sparklers.*

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of the factors in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[5] Once the Department has identified the countries that are economically comparable to the PRC, it identifies those countries which are significant producers of comparable merchandise. From the countries which are both economically comparable and significant producers, the Department will then select a primary surrogate country based upon whether the data for valuing the factors of production are both available and reliable.

Economic Comparability

For this administrative review, the Department has identified Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine as countries that are comparable to the PRC in terms of economic development. *See* Memorandum to Angelica Mendoza from Carole Showers regarding ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China,'' dated August 15, 2011 (Surrogate Country List). Thus, we consider all of the countries on the Surrogate Country List as having satisfied the comparable-economic-development prong of the surrogate selection criteria.

Furthermore, the Department has previously stated that:

> {U}nless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries.

See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011). Because, as explained below, we find that one of the countries from the Surrogate Country List meets the selection criteria, the Department need not consider another country as the primary surrogate country.

Significant Producers of Identical or Comparable Merchandise

In its comments on surrogate-country selection, Baoding Mantong argued that, as in previous segments of the proceeding, India should be used as the surrogate country because it remained at a level of economic development comparable to China, it was a significant producer of merchandise identical to the subject merchandise, and it offered publicly available information to value the factors of production. *See* Baoding Mantong's Letter regarding ''Surrogate Country Comments and the Submission of Proposed Surrogate Values'', dated November 1, 2011 at 2. Baoding Mantong acknowledged that, based on export data, Indonesia could be considered a producer of merchandise comparable to glycine but argued that there were no publicly available data upon which to base the financial-ratio calculations. *Id.* at 3–4 and exhibit 1. In its comments, GEO argued that Indonesia was the most appropriate country to be selected as the surrogate because: (1) Based on export data, it had

[5] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) available on the Department's Web site at *http://ia.ita.doc.gov/policy/index.html.*

the most robust glycine and amino acid industry of the six countries identified by the Department; (2) U.S. import data showed that Indonesia had shipped glycine to the United States in the recent past; and (3) the Department had recently selected Indonesia as the surrogate country in the less-than-fair-value investigation of citric acid and certain citric salts from the PRC. *See* GEO's Letter regarding ''GEO Specialty Chemicals' Comments on Selection of Surrogate Country for Valuing Factors of Production and Surrogate Value Data for Valuing Baoding Mantong's Factors of Production'', dated November 1, 2011 (GEO's Comments), at 3 and exhibit 3. GEO asserted that the Department could value inputs based on data obtained from the *World Trade Atlas* (*WTA*), as published by the Global Trade Information Services, and the public financial information of five Indonesian companies. *Id.* at 5–6 and exhibits 5 and 6.

In rebuttal, Baoding Mantong asserted that India should remain the surrogate country for the proceeding, noting that Indonesia's 2010 exports of glycine were small in comparison with those of India. Baoding Mantong's Letter regarding ''Submission of Rebuttal Surrogate Country and Surrogate Value Comments,'' dated November 8, 2011 at 2. GEO rebutted, however, that India was not a significant producer of merchandise identical to the subject merchandise, alleging that most glycine shipments from India to the United States are transshipments of Chinese-origin glycine [6] and noting that, in the history of the proceeding, no financial information of an Indian glycine producer had been placed on the record. *See* GEO's Letter regarding ''Rebuttal to Baoding Mantong's Surrogate Country Comments and Submission of Proposed Surrogate Values,'' dated November 10, 2011 at 2–3. GEO added that the Indonesian export data showed Indonesia to be a producer of merchandise both identical and comparable to the subject merchandise. *Id.* at 4.

As a principal matter and as discussed above, because the Department finds that one of the countries from the Surrogate Country List meets the selection criteria, the Department is not considering India as the primary surrogate country. Specifically, based on the export data submitted by the parties,[7] we find that Indonesia is a significant producer of comparable merchandise. Baoding Mantong observes that the data for exports of amino acids, including glycine, show that the exports from India far exceeded those from Indonesia. However, of the six economically-comparable countries identified by the Department, Indonesia exported the largest amount of comparable merchandise. Thus, although the data show that Indonesia is not as large an exporter as India, it nevertheless supports the finding that Indonesia is a significant producer of comparable merchandise.

Therefore, we find that Indonesia meets both prongs of the surrogate-selection criteria; it is at a comparable level of economic development to the NME country, pursuant to section 773(c)(4)(A) of the Act, and is also a significant producer of the subject merchandise, pursuant to section 773(c)(4)(B) of the Act. Furthermore, we have found Indonesian data to value the inputs to be publicly available in the *GTA* and, as noted above, in the financial information of several Indonesian companies placed on the record by the domestic interested party.

Accordingly, we preliminarily determine that it is appropriate to use Indonesia as the primary surrogate country for this review and, consequently, we have used it as the source for data for valuing all surrogate values.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit additional publicly-available information to value factors of production for the final results of this administrative review within 20 days after the date of publication of the preliminary results.

Date of Sale

Normally, the Department considers invoice date as the date of sale in accordance with 19 CFR 351.401(i). However, it is the Department's practice to use shipment date as the date of sale when shipment date precedes invoice date.[8]

In its Section C questionnaire response, Baoding Mantong reported the sales invoice date as the date of sale for both its export-price and constructed-export-price (CEP) sales. However, in a supplemental questionnaire response, the company stated that, for export-price sales, it usually issued its invoice prior to the date of shipment and that, in the case of CEP sales, its U.S. affiliate, Glycine & More, Inc. (Glycine & More), usually issued its invoice upon delivery of the product to the customer. *See* Baoding Mantong's supplemental questionnaire response, dated November 7, 2011, at 14. Statements at verification were consistent with the latter response. *See* Verification Report at 11–12. Thus, we have determined that, for export-price sales, the earliest of the invoice date or shipment date is the appropriate date of sale and that, for CEP sales, the date of shipment is the date of sale for purposes of our preliminary results.

Fair Value Comparisons

To determine if sales of glycine from the PRC to the United States were made at less than normal value, we compared the export price or CEP of each sale to the normal value, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice below. In accordance with section 777A(d)(2) of the Act, we compared the export prices and the CEPs of individual U.S. transactions to the normal value of the product.

U.S. Price

A. Export Price

In accordance with section 772(a) of the Act, we based the U.S. price for sales on export price where Baoding Mantong made the first sale to an unaffiliated purchaser prior to importation, and the use of CEP was not otherwise warranted by the facts on the record. We calculated export price based on either the packed freight-on-board or cost-and-freight price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses, foreign brokerage and handling expenses and, if applicable, ocean-freight expenses from the starting price (gross unit price). We based all movement expenses on surrogate values because the movement services were provided by PRC companies (*see* the ''Normal Value'' section of this notice for further details).

[6] GEO's assertions are made in reference to an ongoing anti-circumvention inquiry involving the antidumping duty order on glycine from the PRC and shipments of glycine from India. *See Glycine From the People's Republic of China: Initiation of Antidumping Anticircumvention Inquiry,* 75 FR 66352 (October 28, 2010). No final determination has been made in this inquiry.

[7] Although Baoding Mantong relied on the United Nations Commodity Trade Statistics Database for its export data and GEO retrieved its data from the *Global Trade Atlas,* as published by the Global Trade Information Services (*GTA*), we note that they obtained identical results.

[8] *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13172–73 (March 18, 1998); *see also Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 72 FR 4486 (January 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

B. Constructed Export Price

In accordance with section 772(b) of the Act, we based the U.S. price for sales on CEP where Glycine & More made the first sale to an unaffiliated customer. We calculated CEP based on the packed freight-on-board or delivered price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting foreign movement expenses, international freight, and U.S. movement expenses, including brokerage and handling, from the starting price (gross unit price). Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted the following selling expenses associated with economic activities occurring in the United States from the starting price: Credit expenses and indirect selling expenses, including inventory carrying costs. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based foreign movement expenses, incurred on services provided by PRC companies, on surrogate values and international movement expenses on the U.S.-dollar amount in which they were incurred.

Normal Value

Sections 773(c)(1)(A)–(B) of the Act provides that the Department shall determine normal value using a factors-of-production methodology if the merchandise under review is exported from an NME country and the available information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses a factors-of-production methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies.[9] Thus, the Department based normal value on factor information supplied by Baoding Mantong in its questionnaire responses or obtained at verification.

We valued material, labor, energy, and packing by multiplying the reported per-unit rates for the factors consumed in producing the subject merchandise by the average per-unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. Normally, we calculate freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise. Also, where there are multiple domestic suppliers of a material input, we calculate a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to the factory. These distance adjustments are in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997) (*Sigma*). However, since we found the supplier information (with the exception of the factor for coal) reported by Baoding Mantong to be inaccurate at verification, we found it appropriate to assign partial facts available for the supplier freight distances (other than that of coal).

Specifically, as a result of verification, we found Baoding Mantong to have omitted identifying an input supplier and to have inaccurately reported the distances between the suppliers of inputs and the factory for all inputs except coal. *See* Verification Report at 34. Because we could not verify the reported information, we found it appropriate to rely on partial facts available for this information pursuant to section 776(a)(2)(2) of the Act. Furthermore, because we found that Baoding Mantong possessed the supplier information (*i.e.*, the sales receipts from suppliers) and could have obtained the correct supplier distances for reporting purposes but failed to do so, we found that it did not act to the best of its ability to comply with our requests for information. For a detailed discussion of this issue, *see* Memorandum to the File from Edythe Artman regarding ''Baoding Mantong Fine Chemistry Co., Ltd.—Analysis Memorandum for the Preliminary Results of the 2010/2011 Administrative Review of Glycine from the People's Republic of China,'' dated March 30, 2012 (Baoding Mantong Analysis Memorandum), at 6.

Accordingly, because Baoding Mantong failed to cooperate in the reporting of its supplier information, we find that use of information adverse to the interests of the company, as facts otherwise available, is appropriate pursuant to section 776(b) of the Act. As partial adverse facts available we have applied the distance from the nearest seaport to the factory in the calculation of freight costs (other than coal), since, for each affected input, this distance exceeds that distance between the suppliers and the factory.

Finally, we calculated normal value by adding the values of the factors of production with surrogate values for overhead, selling, general and administrative (SG&A) expenses, profit and packing costs.

Selection of Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing factors of production in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[10] We also considered the quality of the source of surrogate information in selecting surrogate values. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625, 55633 (November 8, 1994).

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the period of review using the wholesale price index for the subject country. But these data were not available for Indonesia. Therefore, where we could not obtain publicly available information contemporaneous with the period of review to value factors, we adjusted surrogate values by using the Consumer Price Index rate for Indonesia, as published in the International Monetary Fund's *International Financial Statistics. See Silicon Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 13534 (March 7, 2012*); Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review,* 77 FR 13547 (March 7, 2012).

In accordance with these guidelines, we calculated surrogate values, except

[9] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006)).

[10] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004)).

as noted below, from import statistics obtained from the *GTA* for Indonesia.[11] Our use of *GTA* import data is in accordance with past practice and satisfies all of our criteria for surrogate values stated above.[12] For further details regarding the specific surrogate values used for direct materials, energy inputs, and packing materials in these preliminary results, *see* the Memorandum to the File from Edythe Artman through Angelica Mendoza regarding ''Factors Valuation Memorandum,'' dated March 30, 2012 (Factors Valuation Memorandum).

To calculate the labor input, we based our calculation on the methodology enunciated by the Department in *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). We explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. *Labor Methodologies,* 76 FR at 36093. We further determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization's *Yearbook of Labor Statistics* (ILO's *Yearbook*). *Labor Methodologies,* 76 FR at 36093–36094.

However, ILO's *Yearbook* does not provide labor data for Indonesia under Chapter 6A and, thus, we have relied upon Chapter-5B data, or wage-rate data, for Indonesia in order to calculate surrogate labor costs. We found the two-digit description under ISIC-Revision 2–3 (Manufacture of Other Chemical Products) to be the best available information on the record because it is specific to the industry being examined and thus derived from industries that produce comparable merchandise. Because these data reflect direct compensation and bonuses and none of the indirect costs reflected in Chapter-6A data, we found that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements. A more detailed description of the wage-rate-calculation methodology is provided in the Factors Valuation Memorandum at 4.

For export-price sales in which Baoding Mantong paid for international freight from a NME provider, we relied upon the freight expenses reported for a CEP sale in which the product was shipped to the same port of destination as the export-price sales. *See* Baoding Mantong Analysis Memorandum at 4.

Baoding Mantong generates and sells two by-products—hydrochloric acid and ammonium chloride—as a result of its manufacturing process. We offset its material costs by revenue it obtained from the sales of the byproducts. *See* Valuation Memorandum at 4.

To value overhead, SG&A expenses, and profit, we have preliminarily determined that the audited 2010 financial statements of three Indonesian companies constitute the best information publicly available and that these companies make products comparable to the subject merchandise. GEO submitted the financial information for five companies with a presence in Indonesia. *See* GEO's Comments at exhibit 6. Two financial reports were for those of subsidiaries of international companies specializing in pharmaceutical, personal and household care products, whereas the other three reports were for companies involved in the production of amino acids (used in pharmaceutical products). We found the information for the subsidiaries to be inappropriate due to the wide range of products made by the companies. Furthermore, we found the products made by the other three companies to be comparable to glycine. Accordingly, we based our calculation of the surrogate financial ratios on the reports of these three companies—PT Darya-Varia Laboratoria Tbk, PT Pyridam Farma Tbk, and PT Kalbe Farma Tbk. We were able to segregate and, therefore, able to exclude direct energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, we have disregarded the direct energy components of the surrogate financial ratios in the calculation of normal value in order to avoid double-counting energy costs and have relied upon the energy inputs reported by Baoding Mantong. *See* Valuation Memorandum at 5.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Department's Web site at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

As a result of the administrative review, we preliminarily determine that the following weighted-average per-unit dumping margin exists for the period March 1, 2010, through February 28, 2011:

Company	Margin (per-unit)
Baoding Mantong Fine Chemistry Co., Ltd	0.00

Comments

We will disclose the calculations used in our analysis to interested parties to this review within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Case briefs from interested parties may be submitted within 30 days of publication of the preliminary results and rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted within five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2).

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties, who wish to request a hearing or to participate in a hearing if it is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, and electronically file the request *via* the Department's Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). *See* 19 CFR 351.303(b). An electronically-filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET). *Id.* Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the case briefs. *See* 19 CFR 351.310(c). If requested, any hearing will be held two days after the

[11] *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 55357 (September 7, 2011) (unchanged in *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 77 FR 14499 (March 12, 2012)).

[12] *See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009) (unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 74 FR 65520 (December 10, 2009)).

scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d).

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, within 120 days after the date of publication of this notice. *See* section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary determination. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline) the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Because Baoding Mantong could not report the entered value for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer or customer and dividing this amount by the total quantity sold to that importer or customer. *See* 19 CFR 351.212(b)(1). Where the duty assessment rates are above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer in accordance with the requirements set forth in 19 CFR 351.106(c)(2). Where an importer- or customer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For those companies for which this review has been rescinded but for which we do not have a separate rate at this time (and which thus remain part of the PRC-wide entity), the Department will issue assessment instructions for the PRC-wide entity upon the completion of this administrative review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Baoding Mantong, the cash-deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 155.89 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This review and notice are in accordance with sections 751(a)(1), 751(a)(3), and 777(i) of the Act.

Dated: March 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–8732 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has completed its administrative review of the countervailable duty order on certain kitchen appliance shelving and racks (''Kitchen Racks'') from the People's Republic of China (''PRC'') for the period January 7, 2009, through December 31, 2009.[1] On October 7, 2011, we published the preliminary results of this review.[2] We provided interested parties with an opportunity to comment on the *Preliminary Results.* Our analysis of the comments submitted as well as incorporation of our post-preliminary analyses led to a change in the net subsidy rates. This review covers multiple exporters/producers, two of which are being individually reviewed as mandatory respondents. We find that the mandatory respondents, Guangdong Wireking Housewares & Hardware Co., Ltd. (''Wireking'') and New King Shan (Zhu Hai) Co., Ltd. (''NKS''), received countervailable subsidies during the POR. Their countervailing duty (''CVD'') rates have been used to calculate the rate applied to other firms subject to this review, as listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek or Nancy Decker, Office of AD/CVD Operations, Office 1, Import

[1] For further explanation of this period, *see* ''Period of Review'' section of this notice.

[2] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 62364 (October 7, 2011) (''*Preliminary Results*'').

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following the *Preliminary Results,* the Department requested additional information from the Government of the PRC (''GOC'') and Wireking on certain subsidy programs. The Department sent a supplemental questionnaire to Wireking and two supplemental questionnaires to the GOC. Wireking submitted its timely response on November 21, 2011, and the GOC submitted timely responses on November 28, 2011, and January 4, 2012. The Department released its post-preliminary analysis on March 2, 2012. *See* Memorandum from the Team to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Post-Preliminary Analysis Memorandum'' (March 2, 2012) (''Post-Preliminary Analysis'').

In the *Preliminary Results,* we invited interested parties to submit briefs. We received case briefs from Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively ''Petitioners''), Wireking, NKS, and the GOC on March 13, 2012. We received rebuttal briefs from NKS, the GOC, and Petitioners on March 19, 2012.

Scope of the Order

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and sub-frames (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Sub-frames from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of the order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Period of Review

We are conducting our analysis in this review on an annual basis, *i.e.,* for the entire calendar year 2009. However, the duties calculated will be applied as follows: for refrigeration shelving duties will be applied to entries from January 7, 2009, through May 6, 2009, and September 9, 2009, through December 31, 2009; for oven racks duties will apply to entries from September 9, 2009, through December 31, 2009.[3]

Analysis of Comments Received

All issues raised in the GOC's, Petitioners', Wireking's and NKS' briefs are addressed in the Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China,'' (April 4, 2012) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (''the Act''), provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or if an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

For purposes of these final results, we have continued to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, for the below issues. For a full discussion of these issues, *see* the Issues and Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences'' section.

1. Non-Cooperative Companies

As explained in the *Preliminary Results,* two companies in this review, Asia Pacific CIS (Wuxi) Co., Ltd. (''Asia Pacific CIS'') and Jiangsu Weixi Group Co. (''Jiangsu Weixi''), did not provide a response to the Department's quantity and value (''Q&V'') questionnaire issued

[3] Entries of certain refrigeration shelving occurring during the period May 7, 2009, through September 8, 2009, were not suspended for CVD purposes due to the termination of provisional measures. Entries of certain oven racks occurring before September 9, 2009, were liquidated at the time of the CVD order because the International Trade Commission (''ITC'') found threat of material injury on certain oven racks. *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order,* 74 FR 46973, 46974–75 (September 14, 2009) (''*CVD Order*'').

during the respondent selection process. *See Preliminary Results,* 76 FR at 62365. We continue to find that these non-cooperating companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the Q&V of their sales, the companies impeded the Department's ability to select the most appropriate respondents in this review. Thus, we are continuing to base the CVD rate for these non-cooperating companies on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's Q&V questionnaire, these companies did not cooperate to the best of their ability in this review. Accordingly, we continue to find that an adverse inference is warranted to ensure that the non-cooperating companies will not obtain a more favorable result than had they fully complied with our request for information.

Consistent with our practice, we have computed the total adverse facts available (''AFA'') rate for these non-cooperating companies using program-specific rates calculated for the cooperating respondents in the instant review or prior reviews of instant case, or calculated in prior CVD cases involving the country under review, in this case the PRC. *See Preliminary Results,* 76 FR at 62366. We continue to find this information to be corroborated in accordance with section 776(c) of the Act. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. As stated in the *Preliminary Results,* the rates used by the Department as AFA are reliable because they were calculated in this review or in a recent final CVD determination using information about the same or similar programs and are relevant because they are actual calculated subsidy rates for programs from which the non-cooperating companies could have received a benefit. *Id.* at 62366–67. In the absence of record evidence because of the non-cooperative companies' decision not to participate in the review, the Department has corroborated the AFA rates that it has selected to the extent practicable as required by section 776(c) of the Act.

2. GOC—Wire Rod

The Department sought information from the GOC about the producers of the wire rod purchased by Wireking and NKS. In particular, for any of the wire rod producers that are not majority-owned by the GOC, the GOC was asked, *inter alia,* to trace back the ownership to the ultimate individual or state owners. *See* the Department's Original Questionnaire (January 28, 2011) at Section II/Appendix 3. The GOC provided information indicating that several wire rod producers were owned in whole or in part by other companies but failed to provide the ownership of those other companies. For one wire rod producer, the GOC failed to provide any ownership information. For another wire rod producer, the GOC did provide ownership information, but the information provided concerning the owners' status as officials of the Communist Party of the PRC was incomplete.

Consistent with our findings in the Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' pursuant sections 776(a)(1) and (a)(2)(A) of the Act in making our final determination. *See* Post-Preliminary Analysis at 4–8. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. *See* Post-Preliminary Analysis at 7–8. In these final results, we continue to apply the adverse inference that the producers of the wire rod used by Wireking and NKS are government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act. *Id.*

3. GOC—Steel Strip

The Department sought information from the GOC about the producers of the steel strip purchased by Wireking and NKS to determine whether the steel strip suppliers are ''authorities'' within the meaning of section 771(5)(B) of the Act. The GOC stated that the producer from which NKS sourced steel strip is majority-owned by the GOC, but, despite multiple requests, refused to provide ownership information of the producers that supplied Wireking. *See* Post-Preliminary Analysis at 2–4.

Consistent with our findings in the Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' pursuant sections 776(a)(1) and (a)(2)(A) of the Act for these final results. *Id.* at 4. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Despite being given multiple opportunities, the GOC declined to provide the requested ownership information for Wireking's suppliers. *Id.* at 4–5. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In these final results, we continue to apply the adverse inference that the steel strip suppliers in question are ''authorities'' within the meaning of section 771(5)(B) of the Act. *Id.*

4. GOC—Zhuhai Farmer Training Subsidy Program

The GOC provided a partial response to the questions regarding this program, which was discovered in the course of this administrative review. Specifically, the GOC did not respond to the usage questions included in the questionnaire. *See* the Department's Supplemental Questionnaire (December 28, 2011) at 3 (referencing the Department's Original Questionnaire at questions G.1.(d) through G.2.(d) in Section II of Appendix 1).

Consistent with our findings in the Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' for these final results pursuant to section 776(a)(2)(A) of the Act. *See* Post-Preliminary Analysis at 4. We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit usage information, the GOC did not cooperate to the best of its ability in this review. *Id.* at 4. We are continuing to apply the adverse inference that the program is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. *Id.*

Changes Since the Preliminary Results

The Department has made the following changes in its determination since the

Preliminary Results

1. In the Post-Preliminary Analysis, we found the Zhuhai Farmer Training Subsidy Program to be countervailable. *See* Post-Preliminary Analysis at 12–13. This program was used by NKS, and we added the amount we calculated for this program to NKS's overall subsidy rate. We have continued this treatment in these final results. *See* Issues and Decision Memorandum at ''GOC—

Zhuhai Farmer Training Subsidy Program.''

2. In the Post-Preliminary Analysis, we found an additional supplier of wire rod to Wireking to be an authority within the meaning of section 771(5)(B) of the Act. *Id.* at 12. We have continued this treatment in these final results. Thus, we have recalculated Wireking's rates under the GOC's provision of wire rod for less than adequate remuneration (''LTAR''). *See* Issues and Decision Memorandum at Provision of Wire Rod for LTAR, and Comments 4 and 5.

3. In the Post-Preliminary Analysis, we found the GOC's provision of steel strip for LTAR to be countervailable. *Id.* at 9–11. This program was used by NKS and Wireking, and we added the amounts we calculated for this program to NKS's and Wireking's respective overall subsidy rates. We have continued this treatment in these final results. *See* Issues and Decision Memorandum at Provision of Steel Strip for LTAR, and Comments 4 and 6.

4. We have added Japanese wire rod export prices sourced from the World Bank to the calculated average of the wire rod prices used as the wire rod benchmark price in the *Preliminary Results* calculations. *See* Issues and Decision Memorandum at Provision of Wire Rod for LTAR, and Comments 4 and 5.

For a full discussion of these changes, *see* the Post-Preliminary Analysis and the Issues and Decision Memorandum.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual *ad valorem* subsidy rates for mandatory respondents, Wireking and NKS.

For the non-selected respondents which responded to our requests for Q&V information for purposes of respondent selection (*i.e.,* Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia) (''Leader Metal''), Hangzhou Dunli Import and Export Co., Ltd./Hangzhou Dunli Industry Co., Ltd. (''Hangzhou Dunli'') and Hengtong Hardware Manufacturing (Huizhou) Co., Ltd. (''Hengtong'')), we have followed the Department's practice, which is to base the margin on an average of the margins calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on AFA. *See, e.g., Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386 (June 29, 2010). Therefore, we have assigned to Leader Metal, Hangzhou Dunli, and Hengtong the simple average of the rates calculated for Wireking and NKS. We have used a simple average rather than a weighted average because weight averaging the rates of the mandatory respondents risks disclosure of proprietary information.

For the non-selected respondents which did not respond to our requests for Q&V information (*i.e.,* Jiangsu Weixi and Asia Pacific CIS), we are applying an AFA rate, as described above.

We find the net subsidy rate for the producers/exporters under review to be as follows:

Producer/Exporter	Net subsidy rate (percent)
Guangdong Wireking Housewares & Hardware Co., Ltd	21.48
New King Shan (Zhu Hai) Co., Ltd	7.85
Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia)	12.35
Hangzhou Dunli Import and Export Co., Ltd./Hangzhou Dunli Industry Co., Ltd	12.35
Hengtong Hardware Manufacturing (Huizhou) Co., Ltd	12.35
Jiangsu Weixi Group Co	264.09
Asia Pacific CIS (Wuxi) Co., Ltd	264.09

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (''CBP'') 15 days after publication of these final results of review.

Oven Racks

For certain oven racks from the PRC entered, or withdrawn from warehouse for consumption from September 9, 2009, through December 31, 2009, the Department will instruct CBP to assess CVDs at the rates applicable to each company shown above and to liquidate such entries. Entries of certain oven racks occurring before September 9, 2009, were already liquidated at the time of the CVD order due to the ITC's finding of threat of material injury on certain oven racks. *See CVD Order,* 74 FR at 46974–75.

Refrigeration Shelving

For certain refrigeration shelving from the PRC entered, or withdrawn from warehouse, for consumption from January 7, 2009, through May 6, 2009, and September 9, 2009, through December 31, 2009, the Department will instruct CBP to assess CVDs at the rates applicable to each company shown above and to liquidate such entries. Entries of certain refrigeration shelving occurring during the period May 7, 2009, through September 8, 2009, were not suspended for CVD purposes due to the termination of provisional measures. *See CVD Order,* 74 FR at 46974–75.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated CVDs in the amounts shown above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated CVDs at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested and completed. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Issues and Decision Memorandum

General Issues

1. Legal Authority to Apply the CVD Law to the PRC.
2. Whether the Final Results Must Account for the Imposition of Double Remedies.
3. Whether the Department's Investigation of the Provision of Wire Rod and Steel Strip for LTAR Met the Initiation Standard.
4. Whether Application of AFA for the Wire Rod and Steel Strip LTAR Programs Is Supported by the Record and Consistent with U.S. International Obligations.
5. Benchmark Used for Wire Rod.

Company-Specific Issues

6. Whether CVDs Should Apply to Wireking's Purchases of Steel Strip, Which is Not Consumed in the Production of the Subject Merchandise.
7. Whether Cash Deposit and Liquidation Should Reflect Names and Translations of Names Used by NKS for Exportation of Goods to the United States.
8. Whether the Department Should Have Found NKS Received a Subsidy from City Maintenance and Construction Taxes and Education Fee Surcharges/

[FR Doc. 2012–8727 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Oil and Gas Trade Mission to Israel

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce (DOC), International Trade Administration (ITA), U.S. and Foreign Commercial Service (CS), is organizing an Executive-led Oil and Gas Trade Mission to Israel, October 27–October 31, 2012. This mission is designed to be led by a Senior Commerce Department official. The purpose of the mission is to introduce U.S. firms to Israel's rapidly expanding oil and gas market and to assist U.S. companies pursuing export opportunities in this sector. The mission to Israel is intended to include representatives from leading U.S. companies that provide services to oil and gas facilities, from design and construction through to project implementation, maintenance of facilities, and environmental protection. The mission will visit Tel Aviv and Jerusalem, and will include a visit to a to-be-determined site (*e.g.,* port or company office). Mission participants will attend the 2012 Israel Energy and Business Convention. Held for the 10th consecutive year, by Eco Energy and Tachlit Conferences, this is Israel's major energy forum. The convention assembles representatives of companies and senior Israeli and foreign policy makers, bringing them together with the Israeli financial and business community.

The mission will help participating firms gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Israel. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with government officials; and high-level networking events. Participating in an official U.S. industry delegation, rather than traveling to Israel on their own, will enhance the companies' ability to secure meetings in Israel.

Commercial Setting

The United States is Israel's largest single country trade partner. Since the U.S.-Israel Free Trade Agreement entered into force in 1985, U.S.-Israel trade has grown nine-fold. Since 1995 nearly all trade tariffs between the U.S. and Israel have been eliminated. Exports of U.S. goods to Israel in 2010 were $6.7 billion. In September 2010, Israel joined the Organization for Economic Co-operation and Development.

Israel has an advanced market economy. As of 2010, Israel has the 24th largest economy in the world. Historically poor in natural resources, Israel depends on imports of petroleum, coal, natural gas and production inputs, though the country's nearly total reliance on energy imports will likely change with recent discoveries of large natural gas reserves off its coast.

In accordance with the OECD's Green Growth Declaration of 2009, the Government of Israel formed a Green Growth Round Table to bring about regulatory, budgetary and environmental policy changes between 2012 and 2020. Therefore, there may be sub-sector opportunities in environmental protection and pollution treatment, for onshore and offshore activities.

Natural Gas

In 2009 and 2010, the greatest natural gas discoveries of the decade were made off the coast of Israel: The Tamar and Leviathan fields. These fields may have the capacity to support Israel's domestic gas consumption with reserves left for exports, and related platform chemicals. The U.S. Geological Survey estimates that there are 122 TCF of recoverable gas in the region, most of it in Israeli waters.[1] In March 2012, another offshore discovery was made by Modiin and Adira Energy northwest of Tel Aviv, with an estimated 1.8 TCF of natural gas as well as oil.[2]

Israel's offshore natural gas reserves are estimated around 30 trillion cubic feet, however further exploration is needed. The Ministry of Energy and Water Resources' (MEWR) Petroleum Unit and Petroleum Council are responsible for issuing petroleum prospecting licenses in Israel. After the Tamar and Leviathan discoveries, numerous licenses to initiate petroleum prospecting were granted. According to the Petroleum Law, license owners must begin petroleum prospecting within 4 months of license issuance, commence drilling operations no later than two years following license issuance, and the interval between the drilling of one well and another cannot exceed 4 months. Consequently, it is likely that various drilling operations will commence in 2012. Because Israel does not yet have the physical infrastructure and technical workforce to support this fast growing industry, local companies are eager to team up with U.S. companies. Finally, Minister of Energy and Water Resources, Uzi Landau is committed to bringing foreign companies into Israel for continued gas exploration, and its eventual export.

The Committee on Energy Policy, recommends setting aside 50 percent of the Tamar and Leviathan gas resources for export. Final decisions on exports will be made in the coming months. All natural gas export facilities will be located in areas under Israeli control. Opportunities exist for prospectors, operators, pipeline construction, logistical services and ship manufacturers. Technical training services are required to build a workforce and there are opportunities for academic cooperation with local universities and colleges.

Oil

In March 2010, the U.S. Geological Survey reported that there is an

[1] US Geological Survey. *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province.* <*http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf*>.

[2] ''Oil and Gas Found at Gabriella, Yitzhak Licenses.'' *Globes Israel Business News.* 13 Mar. 2012. <*http://www.globes.co.il/serveen/globes/docview.asp?did=1000732741*>.

estimated 1.7 billion barrels of recoverable oil in Israel.[3] The World Energy Council estimates Israel's shale deposits could ultimately yield as many as 250 billion barrels of oil.[4] In May 2011, the Russian energy company Inter RAO announced that it had received a license to develop oil shale resources in the Negev desert. In March 2012, another offshore discovery was made by Modiin and Adira Energy northwest of Tel Aviv, with an estimated 128 million barrels of oil, as well as natural gas.[5] The Meged Field may also contain significant oil reserves. In June 2011, Israeli oil exploration company, Givot Olam, announced that its test production site, Meged 5, was producing 800 barrels a day. According to a report by the international consultancy Baker Hughes, Givot Olam will develop Meged 6 and Meged 7 and perform well stimulation for all its drillings; in the next stage the company will drill up to 40 wells throughout the Meged field.[6] In February 2012, MEWR approved continued production at Meged 5, and development of Meged 6–14 drillings.[7]

Many oil exploration licenses are set to expire in 2012 and 2013. Exploration companies are limited to how many licenses they can hold in Israel, and given the success of several exploration projects, there are opportunities for U.S. companies to enter Israel's oil exploration market.

Mission Goals

The mission will help U.S. companies increase their export potential to Israel by identifying profitable opportunities in Israel's natural gas and oil market. As such, the mission will focus on helping U.S. companies obtain market information, establish business and government contacts, solidify business strategies, and/or advance specific projects.

The mission's goals include:

- Facilitating first-hand market exposure and access to government decision makers and key private-sector industry contacts, including potential trading partners;
- Promoting the U.S. energy industry by connecting representatives of U.S. companies with potential trading partners;
- Helping companies gain valuable international business experience in the rapidly growing energy industry; and,
- Helping U.S. companies strengthen their engagement in the worldwide marketplace, leading to increased exports and job creation.

Mission Scenario

Participants will attend country briefings, seminars and meetings with government decision makers and key private-sector industry contacts, including potential trading partners. Participants will also receive briefings on natural gas opportunities in Greece and Cyprus. Networking events will provide mission participants with further opportunities to speak with local business and government representatives, as well as with business executives of major U.S. companies already established in Israel.

The mission will begin in Tel Aviv, where participants will receive market briefings and learn about doing business in Israel. Next, the delegates will participate in the Israel Energy and Business Convention 2012, Israel's major energy forum. Here the participants will be able to learn about the market, meet with potential customers and network with all relevant players from the public and private sector. The convention will include plenary sessions, panel discussions, lectures, investment advice and exhibitions. Commercial Service Tel Aviv will arrange one-on-one business meetings with potential buyers and partners for all trade mission participants.

Next, the delegation will be led on a site visit. Probable site visits include Ashdod Port and Noble Energy offices. Finally, the delegation will visit the MEWR in Jerusalem to learn about the state of the oil and gas industry in Israel.

The precise agenda will depend upon the availability of local government and private sector officials, as well as on the specific goals and makeup of the mission participants.

NOTIONAL TIMETABLE

Saturday, October 27, 2012	• Tel Aviv. ○ Participants arrive in the AM. ○ Afternoon Embassy briefing, doing business in Israel seminar.
Sunday, October 28, 2012	• Tel Aviv. ○ Participation in Israel Energy and Business Convention 2012. ○ One-on-one meetings. ○ Dinner with trade mission lead and relevant government of Israel senior officials.
Monday, October 29, 2012	• Tel Aviv. ○ Participation in Israel Energy and Business Convention 2012. ○ One-on-one meetings. ○ Networking reception with Israeli companies.
Tuesday, October 30, 2012	• Tel Aviv. ○ Site visit to port, or Noble Energy Inc. offices. ○ Reception and Ambassador's residence.
Wednesday, October 31, 2012	• Jerusalem. ○ Relevant government meetings.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. U.S. companies already doing business with

[3] US Geological Survey. *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province. <http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>.*

[4] ''Oil Shale Country Notes: Israel.'' World Energy Council for Sustainable Energy. *<http://www.worldenergy.org/publications/survey_of_energy_resources_2007/oil_shale/country_notes/2005.asp>.*

[5] ''Oil and Gas Found at Gabriella, Yitzhak Licenses.'' *Globes Israel Business News.* 13 Mar. 2012. *<http://www.globes.co.il/serveen/globes/docview.asp?did=1000732741>.*

[6] *Meged Field Reserves Classification.* Rep. Baker Hughes, Mar. 2011. *<http://www.givot.co.il/english/data/images/Media/GIVT0001%20Final%20Report%20rev3.pdf>.*

[7] ''Energy Ministry Approves Meged Field Development.'' Globes Israel Business News, 30 Jan. 2012. *<http://www.globes.co.il/serveen/globes/docview.asp?did=1000720122>.*

Israel as well as U.S. companies seeking to enter to the Israeli market for the first time may apply. A minimum of 10 and a maximum of 20 companies will be selected for participation in this mission.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. The participation fee is $3,285 for large firms and $2,675 for a small or medium-sized enterprise (SME) [8], which covers one representative. The fee for each additional representative is $500.

Participants in Israel Energy and Business Conference will pay show-related expenses directly to the show organizer. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

- Suitability of the company's products or services to the market.
- Applicant's potential for business in the targeted industries in Israel, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives and business with the stated scope of the mission.
- Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will conclude no later than August 24, 2012. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning May 21, 2012, until the maximum of 20 participants is selected. Applications received after August 24, 2012 will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Tel Aviv

Ms. Irit van der Veur, Senior Commercial Specialist, 972–3–519–7540, *irit.vanderveur@trade.gov.*

U.S. Commercial Service Washington, DC

Mr. David McCormack, International Trade Specialist, 202.482.2833, *david.mccormack@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–8608 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–FP–P

[8] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB155

Endangered Species; File Nos. 16549 and 17095

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that the S.O. Conte Anadromous Fish Research Center, U.S. Geological Survey; Box 796, 1 Migratory Way, Turners Falls, MA 01376, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*); and also that Entergy Nuclear Operations Inc., 450 Broadway, Suite 3, Buchanan, NY 10511, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before May 11, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File Nos. 16549 or 17095 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments on either application should be submitted to the Chief, Permits and Conservation Division

- By email to NMFS.*Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- by facsimile to (301) 713–0376, or
- at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on the application(s) would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns at (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations

governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

File 16549: The applicant is requesting authorization for a scientific research permit for takes of shortnose sturgeon in the wild and captivity. The applicant proposes to determine up and downstream migrations, habitat use, spawning periodicity, seasonal movements of shortnose sturgeon in the Connecticut River (from Agawam, MA to Montague, MA). The applicant also proposes captive animal research in laboratory tests of up- and downstream fish passage studies, swimming performance tests, tagging studies, anesthesiology, behavior, physiology and contaminant studies, as well as producing progeny for further research. Additionally, the applicant requests authorization to collect fertilized embryo from each of the following rivers: Merrimack River (MA), Kennebec River and Androscoggin River (ME). The permit would be valid for five years from the date of issuance.

File 17095: The purpose of the research would be the monitoring of sturgeon abundance and distribution through the Hudson River Biological Monitoring Program (HRBMP). The action area includes the Hudson River from River Mile 0 (Battery Park, Manhattan, NY) to River Mile 152 at Troy Dam (Albany, NY). The focus of the monitoring program would be fish identification, mark and recapture, and enumeration within defined Hudson River regions and depth strata. Researchers would non-lethally capture, handle, measure, weigh, scan for tags, insert passive integrated transponder (PIT) and dart tags, photograph, tissue sample, and release up to 82 shortnose sturgeon and 82 Atlantic sturgeon annually. Additionally, researchers would be permitted each year to lethally collect up to 40 shortnose sturgeon and up to 40 Atlantic sturgeon eggs and/or larvae (ELS). The permit would be valid for five years from the date of issuance.

Dated: April 5, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8605 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB152

Endangered Species; File No. 16645

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Georgia Department of Natural Resources (GA DNR) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of ESA-listed shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful commercial shad fishery in Georgia. The duration of the proposed permit is 10 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before June 11, 2012.

ADDRESSES: The application is available for download and review at *http://www.nmfs.noaa.gov/pr/permits/esa_review.htm* under the section heading *ESA Section 10(a)(1)(B) Permits and Applications.*

The application is also available upon written request or by appointment in the following office: Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13626, Silver Spring, MD 20910; phone (301) 427–8403; fax (301) 713–4060.

You may submit comments on this document, identified by NOAA–NMFS–2012–0090, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0090 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- Mail: Submit written comments to Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13626, Silver Spring, MD 20910; Attn: Kristy Beard or Angela Somma.
- Fax (301) 713–4060; Attn: Kristy Beard or Angela Somma.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Angela Somma at (301) 427–8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

NMFS received a draft permit application from GA DNR on September 12, 2011. Based on a review of the application, NMFS requested further information. The applicant submitted a complete application on March 6, 2012 for take of ESA-listed shortnose and Atlantic sturgeon that may be caught incidental to the Georgia shad fishery. The State of Georgia has amended their commercial fishing regulations for the Georgia shad fishery to minimize the incidental capture of ESA-listed shortnose and Atlantic sturgeon. The

new regulations restrict fishing to the lower portions of the Savannah, Ogeechee, and Altamaha Rivers and close the fishery in the Satilla and St. Mary's River. The Georgia shad fishery is open from January 1 to as late as April 30 each year, but would typically end March 31. Georgia regulations require that sturgeon captured in shad nets must be released unharmed into the waters from which they were taken. GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to monitor the number of sturgeon incidentally captured each month in the commercial shad fishery.

GA DNR requests 3-year running averages for takes to account for the potential for a high-take year before or after low-take years. GA DNR estimates that incidental bycatch would not exceed 175 shortnose sturgeon per year (no more than 525 in a 3-year period) and 140 Atlantic sturgeon per year (no more than 420 in a 3-year period) in the Altamaha River, 75 shortnose sturgeon per year (no more than 225 in a 3-year period) and 50 Atlantic sturgeon per year (no more than 150 in a 3-year period) in the Savannah River, and 10 shortnose sturgeon per year (no more than 30 in a 3-year period) and 10 Atlantic sturgeon per year (no more than 30 in a 3-year period) in the Ogeechee River. A mortality rate of approximately 2.3 percent is anticipated based on recent research.

Conservation Plan

GA DNR's conservation plan describes measures designed to minimize, monitor, and mitigate the incidental take of ESA-listed sturgeon. The conservation plan includes Georgia's amended commercial fishing regulations for the Georgia shad fishery, which are expected to minimize the bycatch of sturgeon by closing to shad fishing sections of the rivers that previously had the highest bycatch rates. These closures would also protect known and suspected sturgeon spawning sites. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to monitor the incidental take of sturgeon in the commercial shad fishery. Other monitoring or mitigation actions will be undertaken as required. Monitoring would be funded by GA DNR's Annual Operating Budget.

GA DNR considered and rejected two other alternatives: (1) No change to commercial shad regulations, and (2) establishing new upper boundaries for commercial shad fishing on the Altamaha and Savannah rivers, while completely closing the Ogeechee, Satilla, and St. Mary's rivers to commercial shad fishing.

National Environmental Policy Act

Issuing a permit would constitute a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, *Environmental Review Procedures for Implementing the National Environmental Policy Act* (1999). NMFS intends to prepare an Environmental Assessment to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. The final NEPA and permit determinations will not be made until after the end of the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 5, 2012.

Lisa Manning,

Acting Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8707 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB153

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold an evening public hearing on Wednesday, April 25, 2012 to obtain public input on measures proposed for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan.

DATES: The hearing will be held on Wednesday, April 25, 2012 at 6 p.m.

ADDRESSES: The hearing will be held at the Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355–1900; telephone: (860) 572–0731; fax: (860) 572–0328.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, April 25, 2012

Following the first day of the April 24–26, 2012 New England Fishery Management Council meeting in Mystic, CT, the Council will host a public hearing, the last in a series of coastwide meetings, to obtain public comments on measures under consideration for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan. Management measures could include adjustments to the fishery management program, reporting requirements and measures to address trip notification, carrier vessels and transfers of herring at-sea. A catch monitoring program also is being considered as well as measures to address river herring bycatch and criteria for midwater trawl vessel access to the year-round groundfish closed areas.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 6, 2012.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8774 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA898

Endangered Species; File Nos. 13599 and 1614

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit modifications.

SUMMARY: Notice is hereby given that National Ocean Service Marine Forensic Lab [Responsible Party: Julie Carter], 219 Fort Johnson Road, Charleston, SC 29412 [Permit No. 13599], and the NOAA Fisheries Northeast Region Protected Resources Division [Responsible Party: Mary Colligan], One Blackburn Drive, Gloucester, MA 01930 [Permit No. 1614], have been issued modifications to their scientific research permits.

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9300; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On December 27, 2011, notice was published in the **Federal Register** (76 FR 80890) that modifications of Permit Nos. 13599 and 1614, had been requested by the above-named organizations. The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 13599, issued December 16, 2008 (73 FR 78724), authorizes the permit holder to receive, import, export, transfer, archive, and conduct analyses of marine mammal and endangered species parts. Permit No. 1614, issued February 28, 2008 (73 FR 11873), authorizes the permit holder to collect, receive and transport 100 dead shortnose sturgeon, or parts thereof, annually. Researchers are also authorized the receipt and transport of up to 350 captive bred, dead shortnose sturgeon annually from any U.S. facility authorized to hold captive sturgeon.

The permit modifications add Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), an ESA-listed species not included in the previous permits, for the receipt, importation, exportation, and transfer of Atlantic sturgeon parts and carcasses. No live animal takes or incidental harassment of animals is authorized under these permits. The permit holders are authorized for Atlantic sturgeon parts and samples would be used to support law enforcement actions, research studies (primarily genetics), and outreach education. Atlantic sturgeon samples would be obtained from individuals authorized to collect them in the course of scientific research, salvage activities, or taken during other authorized activities.

Issuance of these modifications, as required by the ESA, was based on a finding that such modifications (1) were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 5, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8773 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA936

Marine Mammals; File No. 17011

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to NHK Enterprises, Inc., Nature & Science Programs, 5–20 Kamiyama-cho, Ogawa Bldg., Shibuya-ku, Tokyo, Japan to conduct commercial or educational photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Laura Morse, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On January 18, 2012, notice was published in the **Federal Register** (77 FR 2513) that a request for a permit to conduct commercial/educational photography of Eastern North Pacific gray whales (*Eschrichtius robustus*) and killer whales (*Orcinus orca*) had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

NHK Enterprises, Inc. will film gray whale and killer whale interactions in the Aleutian Islands from Unimak Pass to Sand Point, Alaska using a 100ft boat, a 21ft aluminum skiff, and a helicopter. Up to 100 gray whales and 300 killer whales may be approached and filmed during the life of the permit. Species that may be incidentally harassed during filming activities include: 60 White-sided dolphins (*Lagenorhyncus obliquidens*), 20 harbor porpoise (*Phocoena phocoena*), 60 harbor seals (*Phoca vitulina*), 40 northern fur seals (*Callorhinus ursinus*), and 40 Dall's porpoises (*Phocoenoides dalli*). Footage would be used to create a film that would document the hunting behavior of transient killer whales and to document the food chain that develops from this predation. The permit will expire on March 31, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: April 4, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8610 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA713

Endangered Species; File Nos. 16526, 16323, 16436, 16422, 16438, 16431, 16507, 16547, 16375, 16442, 16482, and 16508

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that twelve applications have been issued permits to take Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of scientific research. See **SUPPLEMENTARY INFORMATION** for additional information regarding permittees.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On September 21, 2011, notice was published in the **Federal Register** (76 FR 58469) that 12 requests for scientific research permits to take Atlantic sturgeon had been submitted. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 16526 The Maine Department of Marine Resources, Gail Wippelhauser, Ph.D., (Responsible Party (RP)), 21 State House Station, Augusta, ME 04333, was issued a five-year permit to determine the movement patterns and rate of exchange between coastal river systems in Maine, characterize the population structure, and generate estimates of population abundance. Researchers will capture adult, juvenile, and early life stage Atlantic sturgeon. Individuals will be measured, weighed, photographed, PIT tagged, Floy/T-bar tagged, tissue sampled, boroscoped, apical spine sampled, blood sampled, anesthetized, fin ray sectioned, and be implanted with an acoustic telemetry tag.

File No. 16323 The Connecticut Department of Environmental Protection Marine Fisheries, Tom Savoy (RP), PO Box 719, Old Lyme, CT 06371, was issued a five-year permit to monitor Atlantic sturgeon populations to determine behavior, movement, and current status of the species in Connecticut waters. Adult and juvenile Atlantic sturgeon will be measured, weighed, photographed, PIT and Floy/T-bar tagged, genetic tissue sampled, anesthetized, and have a fin ray clipped for ageing analysis; and a subset will be implanted with an internal sonic tag to assess movement patterns.

File No. 16436 The New York State Department of Environmental Conservation, Kathryn Hattala (RP), 21 South Putt Corners Road, New Paltz, NY 12561, was issued a five-year permit to research Atlantic sturgeon in the Hudson River estuary, specifically to assess abundance of juveniles, characterize the adult spawning stock, and generate population estimates. Captured Atlantic sturgeon will be measured, weighed, PIT and dart tagged, tissue sampled, implanted with an external telemetry tag, anesthetized, and gastric lavaged.

File No. 16422 Stony Brook University, School of Marine and Atmospheric Sciences, Michael Frisk (RP), Stony Brook, NY 11794–5000, was issued a five-year permit to research Atlantic sturgeon in the marine and estuarine waters of Connecticut, New York, New Jersey, and Delaware. To characterize Atlantic sturgeon aggregations, Atlantic sturgeon will be captured, measured, weighed, Carlin/Dart tagged, PIT tagged, anesthetized, fin ray sampled, and genetic tissue sampled. Some sturgeon will additionally be implanted internally with a satellite tag, and others will be fitted with an external pop-up satellite tag. A subset of fish will be gastric lavaged, blood sampled, and gill biopsied.

File No. 16438 Environmental Research and Consulting, Inc., Hal Brundage (RP), 126 Bancroft Road, Kennett Square, PA 19348, was issued a five-year permit to study juvenile Atlantic sturgeon abundance, distribution, movement, habitat preferences and biology in the Delaware River and Bay. Researchers will capture, measure, weigh, photograph, PIT and Floy tag, and genetic tissue sample juvenile Atlantic sturgeon. A subset will be anesthetized, gastric lavaged, blood sampled, and implanted with an internal sonic tag. Early life stage fish will also be lethally sampled.

File No. 16431 The Delaware Division of Fish and Wildlife, Stewart Michels (RP), 4876 Hay Point Landing Road, Smyrna, DE 19977, was issued a five-year permit to sample juvenile Atlantic sturgeon in the Delaware River to locate nursery habitat, and characterize population ecology and habitat use. Fish will be captured using gill nets, measured, weighed, photographed, PIT and Floy tagged, tissue sampled, anesthetized, gastric lavaged, and implanted with an internal sonic tag.

File No. 16507 Dewayne Fox, Ph.D., of Delaware State University, 1200 North DuPont Highway, Dover, DE 19901, was issued a five-year permit to sample Atlantic sturgeon in the Delaware River and Bay, as well as in the coastal waters of Delaware. The objectives of this research are to provide more detailed information on the spawning location of Atlantic sturgeon and to develop a fishery independent sampling program to help assess recovery of the species. Researchers will use gill nets to capture adult and juvenile Atlantic sturgeon and egg mats to capture larval fish. Adult and juvenile Atlantic sturgeon will be measured, weighed, photographed, PIT and Floy tagged, and tissue sampled; a subset will be anesthetized, implanted with an internal sonic tag, fin ray sampled, and gonad tissue sampled.

File No. 16547 The U.S. Fish and Wildlife Service, Albert Spells (RP), 11110 Kimages Road, Charles City, VA 23030 was issued a five-year permit to study Atlantic sturgeon in the Chesapeake Bay and its tributaries. Adult and juvenile Atlantic sturgeon will be captured using gill nets, trawls, fyke nets, trammel nets, and pound nets, and larval fish will be collected using egg mats. Adult and juvenile fish will be measured, weighed, tissue sampled, PIT and Floy tagged, and a subset of fish will have an external satellite tag attached.

File No. 16375 North Carolina State University, Joe Hightower, Ph.D., (RP), Campus Box 7617, Raleigh, NC 27695–7617, was issued a five-year permit to determine the presence, abundance, and distribution of Atlantic sturgeon in North Carolina rivers and estuaries. Researchers will use gill nets to capture adult and juvenile Atlantic sturgeon. Captured fish will be measured, weighed, photographed, PIT tagged, Floy tagged, tissue sampled, and a sub-set will be implanted with an internal sonic tag.

File No. 16442 South Carolina Department of Natural Resources, Bill Post, (RP), 217 Fort Johnson Road, Charleston, SC 29412, was issued a five-year permit to conduct scientific research on Atlantic sturgeon in the rivers and estuaries of South Carolina. Adult and juvenile Atlantic sturgeon will be captured using gill nets, and measured, weighed, photographed, PIT and dart tagged, tissue sampled, and a sub-set will be implanted with an internal satellite tag. Young of the year fish will be captured using trawls, and measured and weighed; larval fish will be collected with egg mats. This research will contribute to knowledge about Atlantic sturgeon coastal migrations and riverine movement patterns and information on the status of the species.

File No. 16482 The University of Georgia Warnell School of Forestry and Natural Resources Fisheries Division, Doug Peterson, Ph.D., (RP), Athens, GA 30602, was issued a five-year permit to determine population dynamics and seasonal habitat use of Atlantic sturgeon in Georgia. Gill nets and trammel nets will be used to capture adult and juvenile Atlantic sturgeon, which will be measured, weighed, photographed, PIT and Floy tagged, and tissue sampled; a sub-set will also be anesthetized, laproscoped, fin ray clipped, and implanted with an internal satellite tag. Egg mats and D-frame nets will be used to collect larval fish.

File No. 16508 The U.S. Geological Survey Florida Integrated Science Center, Kenneth Sulak, Ph.D., (RP), 7920 NW 71st Street, Gainesville, FL 32653, was issued a five-year permit to identify and track Atlantic sturgeon in Florida and Georgia rivers. Adult and juvenile Atlantic sturgeon will be captured using a combination of side-scan sonar and gill nets. Captured individuals will be measured, weighed, photographed, PIT and Floy tagged, tissue sampled, and have an external satellite tag attached.

Issuance of these permits, as required by the ESA, was based on a finding that the permits (1) were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 6, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8752 Filed 4–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0042]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on May 11, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: April 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S640.45

SYSTEM NAME:

End Use Certificates (August 26, 2010, 75 FR 52515).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Records are maintained by the Commander, DLA Disposition Services, 74 Washington Avenue North, Battle Creek, MI 49017–3092.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy IG for Investigations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2358, Fort Belvoir, VA 22060–6221.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), their company's name, sales number, and Bidder Identification Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), their company's name,

sales number, and Bidder Identification Number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

[FR Doc. 2012–8591 Filed 4–10–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Information Collection Extension With Change; Comment Request.

SUMMARY: The EIA, pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years with the Office of Management and Budget (OMB) the Petroleum Supply Reporting System. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be filed by June 11, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Sylvia Norris at U.S. Energy Information Administration, Office of Petroleum and Biofuels Statistics, U.S. Department of Energy, 1000 Independence Ave. SW., EI–25, Washington, DC 20585. To ensure receipt of the comments by the due date, submission by email (*Sylvia.Norris@eia.gov*) is recommended. Alternatively, Ms. Norris may be contacted by telephone at 202–586–6106.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Sylvia Norris at the contact information listed above. The proposed forms and instructions are also available on the Internet at: *http://www.eia.gov/survey/#petroleum.*

SUPPLEMENTARY INFORMATION:

This information collection request contains:

(1) *OMB No.:* 1905–0165;

(2) *Information Collection Request Title:* Petroleum Supply Reporting System. The survey forms included in this system are:

Form EIA–800 ''Weekly Refinery Report''
Form EIA–802 ''Weekly product Pipeline Report''
Form EIA–803 ''Weekly Crude Oil Report''
Form EIA–804 ''Weekly Import Report''
Form EIA–805 ''Weekly Bulk Terminal and Blender Report''
Form EIA–809 ''Weekly Oxygenate Report''
Form EIA–22M ''Monthly Biodiesel Production Survey''
Form EIA–810 ''Monthly Refinery Report''
Form EIA–812 ''Monthly Product Pipeline Report''
Form EIA–813 ''Monthly Crude Oil Report''
Form EIA–814 ''Monthly Import Report''
Form EIA–815 ''Monthly Bulk Terminal and Blender Report''
Form EIA–816 ''Monthly Natural Gas Plant Liquids Report''
Form EIA–817 ''Monthly Tanker and Barge Movements Report''
Form EIA–819 ''Monthly Oxygenate Report''
Form EIA–820 ''Annual Refinery Report'';

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:*

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Weekly petroleum and biofuels supply surveys (Forms EIA–800, 802, 803, 804, 805, and 809) are used to gather data on petroleum refinery operations, blending, biofuels production, inventory levels, and imports of crude oil, petroleum products, and biofuels from a sample of operating companies. Data from weekly surveys appear in EIA reports including the *Weekly Petroleum Status Report, http://www.eia.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html; Short-Term Energy Outlook, http://www.eia.gov/forecasts/steo/; This Week in Petroleum, http://www.eia.gov/forecasts/steo/; Monthly Energy Review, http://www.eia.gov/totalenergy/data/monthly/,* and others.

Monthly petroleum and biofuels supply surveys (Forms EIA–810, 812, 813, 814, 815, 816, 817, 819, and 22M) are used to gather data on petroleum refinery operations, blending, biofuels production, natural gas plant liquids production, inventory levels, imports, inter-regional movements, and storage capacity for crude oil, petroleum products, and biofuels. Crude oil production data and petroleum and biofuels export data from the U.S. Census Bureau are integrated with data from EIA petroleum supply surveys to create a comprehensive statistical view of U.S. petroleum supplies that is unavailable from any other source.

Monthly petroleum and biofuels supply surveys support weekly surveys by providing a complete set of in-scope petroleum and biofuels supply data from which weekly survey samples are drawn. In addition, monthly surveys provide data elements that are not collected on weekly reports such as production of natural gas plant liquids and refinery processing gain. Data from monthly petroleum and biofuels supply

surveys appear in EIA reports including *Petroleum Supply Monthly, http://www.eia.gov/petroleum/supply/monthly/; Petroleum Supply Annual, http://www.eia.gov/petroleum/supply/annual/volume1/; Monthly Energy Review, http://www.eia.gov/petroleum/supply/annual/volume1/; Annual Energy Review, http://www.eia.gov/totalenergy/data/annual/; Short-Term Energy Outlook, http://www.eia.gov/forecasts/steo/; Annual Energy Outlook, http://www.eia.gov/forecasts/aeo/er/,* and others. Monthly survey data provide input for reports in the EIA State Energy Data System, and provide U.S. data submitted to the International Energy Agency.

Further, Section 1508 of the Energy Policy Act of 2005 (EPACT 2005) (42 U.S.C. 7135(m)) requires the EIA to conduct a survey which collects the quantity of renewable fuels produced, blended, imported, and demanded on a monthly basis, as well as market price data on a monthly basis. The EIA–22M collects these data in order to fulfill this mandate.

Form EIA–820 ''Annual Refinery Report'' provides plant-level data on refinery capacities as well as national and regional data on fuels consumed by refineries, natural gas consumed as hydrogen feedstock, and crude oil receipts by method of transportation for operating and idle petroleum refineries (including new refineries under construction), and refineries shutdown during the previous year. The information collected appears in the *Refinery Capacity Report, http://www.eia.gov/petroleum/refinerycapacity/; Annual Energy Review, http://www.eia.gov/totalenergy/data/annual/,* and other reports available electronically from the EIA Web site at *http://www.eia.gov.*

(4a) *Proposed Changes to Information Collection:*

The EIA proposes to discontinue Form EIA–801 ''Weekly Bulk Terminal Report'' and collect that same information by adding data elements to Form EIA–805 ''Weekly Bulk Terminal and Blender Report'' so that Form EIA–805 will be used to collect bulk terminal inventory data that were collected on Form EIA–801 as well as gasoline and other blending operations data. The Form EIA–805 would collect stocks of products which can be viewed below and on the draft form (see **FOR FURTHER INFORMATION CONTACT** section for instructions about how to obtain proposed survey material). Reporting on Form EIA–805 will continue to be by each terminal site. The following are proposed modifications to Form EIA–805.

- Add stocks of total natural gas plant liquids (NGPL) and liquefied refinery gases (LRG).
- Add stocks of propane and propylene (a subset of total NGPL and LRG).
- Add stocks of nonfuel propylene (a subset of propane/propylene stocks).
- Add stocks of residual fuel oil.
- Add stocks of unfinished oils.
- Add stocks of products currently listed on Form EIA–805 including

—Fuel ethanol
—Finished Motor Gasoline, Reformulated, blended with Fuel Ethanol
—Finished Motor Gasoline, Reformulated, Other
—Finished Motor Gasoline, Conventional, blended with Fuel Ethanol, Ed55 and lower
—Finished Motor Gasoline, Conventional, blended with Fuel Ethanol, Greater than Ed55
—Finished Motor Gasoline, Conventional, Other
—Motor Gasoline Blending Components, Reformulated Blendstock for Oxygenate Blending (RBOB)
—Motor Gasoline Blending Components, Conventional Blendstock for Oxygenate Blending (CBOB)
—Motor Gasoline Blending Components, Gasoline Treated as Blendstock (GTAB)
—Motor Gasoline Blending Components, All Other
—Kerosene-Type Jet Fuel
—Distillate Fuel Oil by Sulfur Category (15 ppm sulfur and under, Greater than 15 ppm to 500 ppm sulfur (inclusive), and Greater than 500 ppm sulfur)

Eliminating Form EIA–801 and the proposed changes to Form EIA–805 will make weekly bulk terminal reporting consistent with current survey reporting on monthly surveys and will provide more useful and accurate data for weekly analysis and assessment of U.S. inventories and blending of petroleum products and biofuels.

EIA originally proposed to discontinue using Form EIA–801 for weekly bulk terminal reporting and consolidate all petroleum terminal reporting on Form EIA–805 as part of our 2009 survey form changes. The 2009 proposal was later withdrawn because of concern about increased reporting burden due to the large number of weekly responses that were expected to be needed by Form EIA–805 in order to achieve the necessary sample coverage (the estimate was for an increase from 445 to 968 weekly responses), as well as a concern about the feasibility of processing all of the responses in a timely manner. EIA has implemented an electronic data collection method called the Excel Data Extraction System (EDES) that allows us to process a larger volume of reports. Further assessment of the sample requirement, including examination of changes in the terminal industry, resulted in reduction in the estimate of the required responses to 750 per week, an increase of 215 weekly responses from the current 535 weekly responses for collecting blending data on Form EIA–805. When balanced against a reduction of 187 weekly responses from eliminating Form EIA–801, this results in an estimated net increase of only 28 weekly responses. We believe there are sufficient benefits in terms of data utility and quality to be derived from consolidation of weekly bulk terminal reporting to justify this relatively minor increase in the number of weekly responses.

EIA proposes to change the data protection policy regarding monthly atmospheric crude oil distillation capacity reported on Form EIA–810 ''Monthly Refinery Report.'' EIA proposes to no longer protect monthly atmospheric crude oil distillation reported on Form EIA–810. EIA proposes to release these data as public information in identifiable form. Atmospheric crude oil distillation capacity data collected on Form EIA–820 ''Annual Refinery Report,'' are released each year in identifiable form, by company and refinery site. These data appear in the Refinery Capacity Report available at *http://www.eia.gov/petroleum/refinerycapacity/* from the EIA web site. Protecting the atmospheric crude oil distillation capacity data that is collected monthly on Form EIA–810 is inconsistent with the public release of this same information that is reported annually on Form EIA–820. EIA is only proposing to no longer protect the identifiability of atmospheric crude oil distillation capacity reported on Form EIA–810. All other information reported on Form EIA–810 will continue to be protected to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Department of Energy (DOE) regulations, 10 CFR 1004.11 implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. 1905.

This change is proposed so that EIA may release reports and other analytical information products that contain statements related to atmospheric crude oil distillation capacity at specific refineries based on more current monthly data rather than relying solely upon annual data. Under the current

disclosure limitation policy, we are only able to make refinery-specific statements about capacity based on data from Form EIA–820, but interest is often in more current data. The public release of monthly crude oil distillation capacity information reported on Form EIA–810 will assist State and local governments and other energy planners that use these data for energy emergency planning. EIA contends that the release of atmospheric crude oil distillation capacity reported on Form EIA–810 will not cause competitive harm because similar data are already publicly released by EIA in the Annual Refinery Capacity Report and refinery-specific capacity data are widely quoted in press reports.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

(5) *Estimated Number of Survey Respondents:*

Weekly Survey Forms:

EIA–800, 141 Respondents; EIA–802, 51 Respondents; EIA–803, 57 Respondents; EIA–804, 104 Respondents; EIA–805, 750 Respondents; EIA–809, 142 Respondents;

Monthly Survey Forms:

EIA–22M, 150 Respondents; EIA–810, 153 Respondents; EIA–812, 80 Respondents; EIA–813, 167 Respondents; EIA–814, 391 Respondents; EIA–815, 1,476 Respondents; EIA–816, 451 Respondents; EIA–817, 34 Respondents; EIA–819, 203 Respondents;

Annual Survey Forms:

EIA–820, 148 Respondents.

Total respondents for Petroleum Supply Reporting System: 4,498 respondents. Many respondents report on multiple surveys and are counted for each survey they report. For example, the 104 respondents on the weekly Form EIA–804 are also included as a subset of the 391 respondents reporting on the monthly Form EIA–814, so that the two surveys contribute a total of 495 respondents.

(6) *Annual Estimated Number of Total Responses:*

Weekly Survey Forms (Respondents × 52):

EIA–800, 7,332 Responses; EIA–802, 2,652 Responses; EIA–803, 2,964 Responses; EIA–804, 5,408 Responses; EIA–805, 39,000 Responses; EIA–809, 7,384 Responses;

Monthly Survey Forms (Respondents × 12):

EIA–22M, 1,800 Responses; EIA–810, 1,836 Responses; EIA–812, 960 Responses; EIA–813, 2,004 Responses; EIA–814, 4,692 Responses; EIA–815, 17,712 Responses; EIA–816, 5,412 Responses; EIA–817, 408 Responses; EIA–819, 2,436 Responses;

Annual Survey Forms (Respondents × 1):

EIA–820, 148 Responses.

Total annual responses for Petroleum Supply Reporting System: 102,148 responses annually. EIA estimates that it will receive a total of 102,148 reports annually, not that each survey form will individually be reported 102,148 times annually.

(7) *Annual Estimated Number of Burden Hours:*

EIA estimates the following burden hours per response for the Petroleum Supply Reporting System survey forms:

Weekly Survey Forms:

EIA–800, 1.58 hours; EIA–802, 0.95 hours; EIA–803, 0.5 hours; EIA–804, 1.75 hours; EIA–805, 1.6 hours; EIA–809, 1 hour;

Monthly Survey Forms:

EIA–22M, 3 hours; EIA–810, 6 hours; EIA–812, 4.3 hours; EIA–813, 2.5 hours; EIA–814, 2.55 hours; EIA–815, 5 hours; EIA–816, 0.95 hours; EIA–817, 2.25 hours; EIA–819, 1.75 hours;

Annual Survey Forms:

EIA–820, 2.00 hours.

Based on these estimates and the estimates in (6), EIA estimates an annual total of 231,531 burden hours for the Petroleum Supply Reporting System.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0. EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on April 4. 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–8667 Filed 4–10–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14154–001]

Notice of Application Accepted for Filing With The Commission, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing; William Arkoosh

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14154–001.

c. *Date filed:* November 15, 2011.

d. *Applicant:* William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II Project.

f. *Location:* On the Little Wood River, six miles west of the Town of Shoshone, Lincoln County, Idaho. The project would occupy approximately 0.5 acre of federal lands managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* William Arkoosh, 2005 Highway 26, Gooding, Idaho 83330. Phone: (208) 539–5443.

i. *FERC Contact:* Jennifer Harper, (202) 502–6136 or *Jennifer.Harper@FERC.gov*.

j. *Deadline for filing motions to intervene and protests, requests for cooperating agency status, comments, terms and conditions, recommendations, and prescriptions:* Due to the small size and particular location of this project, the close coordination with state and federal agencies during the preparation of the application, and the public and agency review of the project under the previous license issued for this site, the 60-day timeframe in 18 CFR 4.34(b) for filing comments, terms and conditions, recommendations, and prescriptions is shortened. Instead, comments, terms and conditions, recommendations, and prescriptions will be due 30 days from the issuance date of this notice. Further, the date for filing motions to intervene and protests will be due 30 days from the issuance date of this notice. All reply comments are due 45 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Little Wood River Ranch II Project consists of: (1) A 220-foot-long, 12-foot-wide rock rubble diversion dam, impounding a 9.1-acre reservoir on the Little Wood River; (2) a 3,900-foot-long feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 120-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,230 kilowatts; (5) a 1,600-foot-long tailrace canal; (6) a 2.2-mile-long, 12.5-kilovolt transmission line; (7) an access road; and (8) appurtenant facilities. The average annual generation is estimated to be 5,600 megawatt-hours.

m. Due to the applicant's close coordination with federal and state agencies during the preparation of the application, completed studies, agency comments, and discussion of issues under the previous license process for this site, we intend to waive scoping, shorten the notice filing period, and expedite the license process. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of the availability of the EA	July 2012

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8644 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–19–000]

Atmos Energy Colorado/Kansas Division; Notice of Baseline Filing

Take notice that on March 30, 2012, Atmos Energy Colorado/Kansas Division (Atmos) submitted a baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (NGPA) to comply with a Delegated Letter Order issued March 29, 2012, in Docket No. CP12–53–000 (138 FERC ¶ 62,319).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, April 16, 2012.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8643 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–787–001.
Applicants: Dogwood Energy LLC.
Description: Compliance Filing of Participation Agreement to be effective 3/29/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5039.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1439–000.
Applicants: PJM Interconnection, L.L.C.
Description: First Revised Service Agreement No. 3064; Queue No. W3–145 to be effective 3/7/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5030.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1440–000.
Applicants: Southern California Edison Company.
Description: Amended SGIA SERV AG SCE–TDBU SCE–GPS 2501WSanBernardino Redlands Roof Top Solar to be effective 4/5/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5044.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1441–000.
Applicants: Southern California Edison Company.
Description: GIA WDAT SERV AG–SCE–TDBU SCE–PPD SPVP 47 South Bay No 5 Roof Top Solar Project to be effective 4/5/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5046.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1442–000.
Applicants: Liberty Electric Power, LLC.
Description: Cancellation of Duplicative Record ID to be effective 12/25/2011 under ER12–1442 Filing Type: 270.
Filed Date: 4/4/12.
Accession Number: 20120404–5075.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1443–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits Notice of Cancellation.
Filed Date: 4/4/12.
Accession Number: 20120404–5127.
Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1444–000.
Applicants: Buckeye Power, Inc.
Description: Cancellation of Mone Generating Plant Tariff Filing to be effective 4/4/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5147.
Comments Due: 5 p.m. ET 4/25/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–9–000.
Applicants: Alinda Capital Partners I Ltd.
Description: FERC 65A Exemption Notification of Alinda Capital Partners I Ltd.
Filed Date: 4/4/12.
Accession Number: 20120404–5045.
Comments Due: 5 p.m. ET 4/25/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8690 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4540–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Notice of Effective Date of Auto Mitigation and Related

Changes—ER11–4540–000 to be effective N/A.

Filed Date: 4/3/12.

Accession Number: 20120403–5164.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–659–001.

Applicants: Baconton Power LLC.

Description: Update to Triennial Review to be effective 12/22/2011.

Filed Date: 4/3/12.

Accession Number: 20120403–5105.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1242–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Notice of Effective Date of Auto Mitigation and Related Changes—ER12–1242–000 to be effective N/A.

Filed Date: 4/3/12.

Accession Number: 20120403–5167.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1250–001.

Applicants: PSEG New Haven LLC.

Description: PSEG New Haven LLC Market Based Rate Tariff to be effective 4/6/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5186.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1408–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Supplement to WDS Filing 4–2012 to be effective N/A.

Filed Date: 4/3/12.

Accession Number: 20120403–5086.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1413–000.

Applicants: PSEG New Haven LLC.

Description: PSEG New Haven LLC Market Based Rate Tariff to be effective N/A.

Filed Date: 4/3/12.

Accession Number: 20120403–5159.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1430–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the PJM Tariff & OA re Demand Response in Regulation Markets to be effective 6/1/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5000.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1431–000.

Applicants: ReEnergy Ashland LLC.

Description: ReEnergy Ashland Notice of Succession and MBR Tariff Revisions to be effective 1/18/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5056.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1432–000.

Applicants: ReEnergy Livermore Falls LLC.

Description: ReEnergy Livermore Falls Notice of Succession and MBR Tariff Revisions to be effective 1/18/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5076.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1433–000.

Applicants: Fowler Ridge Wind Farm LLC.

Description: Compliance Filing—Certificate of Concurrence for CFA 2012 to be effective N/A.

Filed Date: 4/3/12.

Accession Number: 20120403–5079.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1434–000.

Applicants: ReEnergy Fort Fairfield LLC.

Description: ReEnergy Fort Fairfield Notice of Succession and MBR Tariff Revisions to be effective 1/18/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5097.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1435–000.

Applicants: ReEnergy Stratton LLC.

Description: ReEnergy Stratton Notice of Succession and MBR Tariff Revisions to be effective 1/18/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5104.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1436–000.

Applicants: Eagle Point Power Generation LLC.

Description: Eagle Point MBR Tariff to be effective 4/2/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5107.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1437–000.

Applicants: Eagle Point Power Generation LLC.

Description: Eagle Point Reactive Tariff to be effective 4/2/2012.

Filed Date: 4/3/12.

Accession Number: 20120403–5108.

Comments Due: 5 p.m. ET 4/24/12.

Docket Numbers: ER12–1438–000.

Applicants: Alabama Power Company.

Description: Revised OATT Attachment M Formula Rate Manual Filing to be effective 1/1/2011.

Filed Date: 4/3/12.

Accession Number: 20120403–5188.

Comments Due: 5 p.m. ET 4/24/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8689 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Bishop Hill Interconnection LLC.	EG12–24–000.
Tenaska Washington Partners, L.P.	EG12–25–000.
Pattern Santa Isabel LLC ..	EG12–26–000.
Mariposa Energy, LLC	EG12–27–000.
Blue Summit Wind, LLC	EG12–28–000.
CPV Sentinel, LLC	EG12–29–000.
Spring Valley Wind LLC	EG12–30–000.
Dynegy Midwest Generation, LLC.	EG00–235–000.

Take notice that during the month of March 2012, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8650 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5867–051]

Alice Falls Corporation, Alice Falls Hydro, LLC; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On February 23, 2012, Alice Falls Corporation (transferor) and Alice Falls Hydro, LLC (transferee) filed an

application for transfer of license [1] for the Alice Falls Hydroelectric Project, No. 5867, located on the AuSable River in Clinton and Essex counties, New York.

Applicants seek Commission approval to transfer the license for the Alice Falls Hydroelectric Project from transferor to transferee.

Applicants' Contact: Transferor: Alice Falls Corporation, c/o Joshua A. Sabo, Esq., 287 North Greenbush Road, Troy, NY 12180, (518) 286–9050. Transferee: Alice Falls, Hydro, LLC, c/o Champlain Spinners Power Corporation, Inc., Attn: Margaret Benedict, 813 Jefferson Hill Road, Nassau, NY 12123, (518) 766–2753.

FERC Contact: Patricia W. Gillis at (202) 502–6779, *patricia.gillis@ferc.gov*.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–5867) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8649 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 25 FERC ¶ 62,015, Order Issuing License (Major Under 5MW) and Denying Competing Preliminary Permit Applications, issued October 5, 1983.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1434–000]

ReEnergy Fort Fairfield LLC; Supplemental Notice That Revised Market-Based Rate Tariff Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ReEnergy Fort Fairfield LLC's tariff revision filing, noting that such filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is April 25, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8693 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1432–000]

ReEnergy Livermore Falls LLC; Supplemental Notice That Revised Market-Based Rate Tariff Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ReEnergy Livermore Falls LLC's tariff revision filing, noting that such filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 25, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8692 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1431–000]

ReEnergy Ashland LLC; Supplemental Notice That Revised Market-Based Rate Tariff Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ReEnergy Ashland LLC's tariff revision filing, noting that such filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 25, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8691 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1435–000]

ReEnergy Stratton LLC; Supplemental Notice That Revised Market-Based Rate Tariff Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ReEnergy Stratton LLC's tariff revision filing, noting that such filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 25, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8688 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–10–000]

Explorer Pipeline Company; Notice of Petition for Declaratory Order

Take notice that on March 23, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2011), Explorer Pipeline Company (Explorer) petitioned the Federal Energy Regulatory Commission for a declaratory order approving (1) priority capacity and (2) the overall rate structure for Explorer's proposed diluent pipeline extension project (Diluent Extension Project). The Diluent Extension Project involves the construction of a new pipeline segment from Peotone, Illinois to Manhattan, Illinois, where Explorer's pipeline system will interconnect with Enbridge's Southern Lights pipeline. This extension project will offer a new

option for shippers transporting diluent from Explorer's origins to Enbridge's Southern Lights, and ultimately to Western Canada, where diluent demand is increasing.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, April 20, 2012.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8647 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–11–000]

Shell Pipeline Company LP; Notice of Petition for Declaratory Order

Take notice that on March 30, 2012, pursuant to Rule 207(a)(2), Shell Pipeline Company LP (SPLC) submitted a petition requesting that the Federal Energy Regulatory Commission (Commission) issue a declaratory order approving as lawful SPLC's proposed contract rates, proposed service priority rights and prorationing provisions for shippers as provided in the Transportation Service Agreement for SPLC's proposed transportation service from Houston, Texas to Houma, Louisiana and certain order destinations and origins (Ho-Ho Reversal Project). SPLC also seeks approval of a Net Present Value methodology to allocate requests for contract capacity received during its binding open season for such service in the event the Ho-Ho Reversal Project is oversubscribed.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, April 20, 2012.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8648 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–7–000]

United States Department of Energy and Bonneville Power Administration; Notice of Petition for Declaratory Order

Take notice that on March 29, 2012, pursuant to sections 35.28(e) and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28(e) and 18 CFR 385.207, the Bonneville Power Administration (Bonneville), submitted certain amendment to its Open Access Transmission Tariff (tariff) and a Petition for Declaratory Order requesting the Commission find that Bonneville's tariff, as amended by this filing, substantially conforms or is superior to the Commission's *pro forma* tariff and that Bonneville satisfies the requirements for reciprocity status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 30, 2012.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8646 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14227–000]

Nevada Hydro Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 14, 2011, the Nevada Hydro Company (Nevada Hydro) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lake Elsinore Advanced Pumped Storage Project to be located on Lake Elsinore and San Juan Creek, in Riverside, Orange and San Diego Counties, California. All timely filings submitted pursuant to the original November 29, 2011 notice will continue to be considered timely and do not need to be resubmitted.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new upper reservoir (Decker Canyon) having a 240-foot-high main dam and a gross storage volume of 5,500 feet, at a normal reservoir surface elevation of 2,830 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 600 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 32 miles of 500–kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

Applicant Contact: Arnold B. Podgorsky and Patrick L. Morand, Wright & Talisman, P.C., 1200 G Street NW., Suite 600, Washington, DC 20005, Phone (202) 393–1200.

FERC Contact: Jim Fargo; phone: (202) 502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14227–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8642 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

Strategic Planning Committee

April 9, 2012.

8 a.m.–3 p.m. Local Time.

The above-referenced meeting will be held at: Renaissance Oklahoma City, 10 North Broadway Avenue, Oklahoma City, Oklahoma 73102.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.spp.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC.*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC.*

Docket No. ER09–548–001, *ITC Great Plains, LLC.*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–3967–002, *Southwest Power Pool, Inc.*

Docket No. ER11–3967–003, *Southwest Power Pool, Inc.*

Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6210 or *luciano.lima@ferc.gov.*

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8645 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER12–678–000, ER12–679–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

By order dated March 30, 2012, in Docket Nos. ER12–678–000 and ER12–679–000, the Federal Energy Regulatory Commission (Commission) directed staff to convene a technical conference regarding proposals by the Midwest Independent Transmission System Operator, Inc. (MISO) regarding Revenue Sufficiency Guarantee (RSG) costs associated with resources committed for voltage or local reliability requirements (VLR costs).[1] In Docket No. ER12–678–000, MISO proposed to allocate a greater proportion of VLR costs to the load in the Local Balancing Authority Area benefitted by such commitments. In Docket No. ER12–679–000, MISO proposed a mechanism by which to mitigate the exercise of market power with regard to offers made to address VLR issues. In its order, the Commission accepted and suspended for five months both of MISO's filings, subject to the outcome of the technical conference and further Commission order.

Take notice that such conference will be held on May 15, 2012 at the Commission's headquarters at 888 First Street NE., Washington, DC 20426, beginning at 9 a.m. (EDT) in Room 3M–2A&B. The technical conference will be led by Commission staff.

The purpose of the technical conference is to discuss the issues raised by MISO's proposed VLR cost allocation methodology and mitigation mechanism. A subsequent notice detailing the topics to be discussed will be issued in advance of the conference. Following the conference, the parties will have an opportunity to file written comments that will be included in the formal record of the proceeding, which, together with the record developed to date, will form the basis for further Commission action.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

All parties are permitted to attend. For more information on this conference, please contact Stephen Pointer at *stephen.pointer@ferc.gov* or 202–502–8761, Adam Pollock at *adam.pollock@ferc.gov* or 202–502–8458, or Katherine Waldbauer at *katherine.waldbauer@ferc.gov* or 202–502–8232.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8641 Filed 4–10–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Midwest Independent Transmission System Operator, Inc.,* 138 FERC ¶ 61,235 at P 49 (2012).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9344–4]

Access to Confidential Business Information by CGI Federal Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, CGI Federal Inc. (CGI) of Fairfax, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data occurred on or about March 26, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA Contract Number GS00Q09BGD0022, Order Number EP–G11H–00154, contractor CGI of 12601 Fair Lakes Circle, Fairfax, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in developing, migrating and integrating various OPPT systems to support the collection, routing and analysis of TSCA CBI data. The full scope of the Central Data Exchange (CDX) is to enable fast, efficient and more accurate environmental data submissions from state and local governments, industry and tribes to EPA and participating program offices. EPA's CDX is the point of entry on the Environmental Information Exchange Network for environmental data submissions to the Agency. CDX will work with both EPA program offices looking for a way to better manage incoming data, and stakeholders looking

for a way to reduce time and money spent to meet EPA reporting requirements.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA Contract Number GS00Q09BGD0022, Order Number EP–G11H–00154, CGI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CGI's personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CGI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until January 1, 2017. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CGI's personnel have been required to sign nondisclosure agreements and have been briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: March 29, 2012.

Matthew G. Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–8731 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0933; FRL–9342–2]

Imidacloprid, Methomyl, and Oxamyl; Cancellation Order for Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for amendments to terminate uses, voluntarily requested by registrants and accepted by the Agency, of products containing imidacloprid, methomyl, and oxamyl, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a January 11, 2012 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II to voluntarily amend certain imidacloprid pesticide registrations to terminate use on almonds, to voluntarily amend certain methomyl product registrations to delete use on grapes, and to voluntarily amend oxamyl product registrations to delete use on soybeans. These are not the last products containing imidacloprid, methomyl, or oxamyl registered for use in the United States. In the January 11, 2012 Notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The amendments are effective April 11, 2012.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate Chemical Review Manager identified in the table below for the pesticide active ingredient of interest:

Pesticide active ingredient	Chemical review manager's name and contact information
Imidacloprid	Rusty Wasem, (703) 305–6979, *wasem.russell@epa.gov.*
Methomyl	Tom Myers, (703) 308–8589, *myers.tom@epa.gov.*
Oxamyl	Monica Wait, (703) 347–8019, *wait.monica@epa.gov.*

Alternatively, you can write to the appropriate Chemical Review Manager's attention at: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0933. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces amendments to delete uses, as requested by registrants, of products registered under section 3 of FIFRA. These registrations are listed in Table 1 of this unit.

TABLE 1—IMIDACLOPRID, METHOMYL, AND OXAMYL PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

EPA Registration No.	Product name	Active ingredient	Use deleted
264–755	Imidacloprid Technical	Imidacloprid	Almonds.

TABLE 1—IMIDACLOPRID, METHOMYL, AND OXAMYL PRODUCT REGISTRATION AMENDMENTS TO DELETE USES—Continued

EPA Registration No.	Product name	Active ingredient	Use deleted
264–756	Merit 75% Concentrate Insecticide	Imidacloprid	Almonds.
264–1131	Gaucho 600 Flowable Concentrate	Imidacloprid	Almonds.
66222–156	MANA Alias 4F	Imidacloprid	Almonds.
66222–228	Pasada 1.6 Flowable Insecticide	Imidacloprid	Almonds.
70506–122	UPI Imidacloprid Technical Insecticide	Imidacloprid	Almonds.
70506–153	Imidacloprid 70 DF Agricultural Insecticide	Imidacloprid	Almonds.
70506–154	Fist 1.6 F Insecticide	Imidacloprid	Almonds.
81598–5	Rotam Imidacloprid Technical	Imidacloprid	Almonds.
82542–16	Technical Imidacloprid	Imidacloprid	Almonds.
82542–25	Imidacloprid 2F Insecticide	Imidacloprid	Almonds.
82633–8	Imidacloprid Technical	Imidacloprid	Almonds.
83529–6	Midash Forte Insecticide	Imidacloprid	Almonds.
87290–14	Willowood Imidacloprid 4SC	Imidacloprid	Almonds.
83558–34	Imidacloprid Technical Insecticide	Imidacloprid	Almonds.
352–361	DuPont Methomyl Composition	Methomyl	Grapes.
352–366	DuPont Methomyl Technical	Methomyl	Grapes.
352–372	Vydate L Insecticide/Nematicide	Oxamyl	Soybeans.
352–400	DuPont Oxamyl Technical 42 Insecticide/Nematicide	Oxamyl	Soybeans.
352–532	Vydate C–LV Insecticide/Nematicide	Oxamyl	Soybeans.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. The company corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 2—REGISTRANTS OF AMENDED PRODUCTS

EPA Company No.	Company name and address
264	Bayer CropScience, 2 T.W. Alexander Drive, PO Box 12014, Research Triangle Park, NC 27709.
352	E.I. Du Pont de Nemours and Co., Inc., DuPont Crop Protection, 1007 Market Street, Wilmington, DE 19898.
66222	Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Road, Suite 300, Raleigh, NC 27609.
70506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
81598	IPM Resources LLC, 4032 Crockers Lake Blvd., Suite 818, Sarasota, FL 34238.
82542	Source Dynamics, Inc., 10039 E. Troon North Drive, Scottsdale, AZ 85262.
82633	Sharda Worldwide Exports, 7460 Lancaster Pike, Suite 9, Hockessin, DE 19707.
83529	Sharda USA LLC, 7460 Lancaster Pike, Suite 9, Hockessin, DE 19707.
83558	Celsius Property B.V. Amsterday (NL), c/o Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Road, Suite 300, Raleigh, NC 27609.
87290	Willowood, LLC, 1600 NW Garden Valley Blvd., Suite 130, Roseburg, OR 97471.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the January 11, 2012 **Federal Register** Notice announcing the Agency's receipt of the requests for voluntary amendments to delete uses of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate use of imidacloprid on almonds, methomyl on grapes, and oxamyl on soybeans for the product registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are amended to terminate the affected uses. The effective date of the cancellations that are the subject of this notice is April 11, 2012. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on January 11, 2012 (77 FR 1684) (FRL–9328–2). The comment period closed on February 10, 2012.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stock provisions for the products subject to this order are as follows.

Once EPA has approved amended imidacloprid product labels reflecting the requested amendments to delete use on almonds, registrants are permitted to sell or distribute products listed in Table 1 of Unit II under the previously approved labeling until October 11, 2013, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other

restrictions have been imposed. Thereafter, imidacloprid registrants will be prohibited from selling or distributing the products whose labels include the deleted use identified in Table 1 of Unit II, except for export consistent with FIFRA section 17, or for proper disposal.

For methomyl, now that EPA has approved amended product labels reflecting the requested amendments to delete use on grapes, the registrants are permitted to sell or distribute products under the previously approved labeling until June 8, 2012. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted use identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

For imidacloprid and methomyl, persons other than the registrants may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

For the oxamyl voluntary amendment, use on soybeans was removed from all oxamyl product labels in 2006 following the Oxamyl Reregistration Eligibility Decision. Because the soybean use has not been included on oxamyl product labels since 2006, no existing stocks period is needed.

List of Subjects

Environmental protection, almond, imidacloprid, grape, methomyl, soybean, oxamyl, Pesticides and pests.

Dated: March 30, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–8493 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0123; FRL–9341–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from February 20, 2012 to February 29, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before May 11, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0123, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422

South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from February 20, 2012 to February 29, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—19 PMNS RECEIVED FROM 02/20/12 TO 02/29/12

Case No.	Received date	Projected notice end date	Manufacturer/Importer	Use	Chemical
P–12–0186 ..	02/17/2012	05/16/2012	CBI	(G) Chemical intermediate [destructive use].	(G) Acrylic acid, carbamate, alkyl ester.
P–12–0190 ..	02/17/2012	05/16/2012	Emery Oleochemicals LLC ..	(G) Additive for the manufacturing of certain plastics.	(G) Fatty acid ester.
P–12–0191 ..	02/20/2012	05/19/2012	Dow Chemical Company	(G) Component of adhesive; component of composite.	(S) Oxirane, 2,2′-(phenylene)bis-.
P–12–0192 ..	02/21/2012	05/20/2012	Cray Valley USA, LLC	(G) Additive for filler dispersion and/or property enhancement in thermoplastic and rubber compounds.	(G) Maleated resin, half-ester.
P–12–0193 ..	02/21/2012	05/20/2012	Cray Valley USA, LLC	(G) Additive for the dispersion of fillers in thermoplastic polyolefins and other resins.	(G) Maleated resin.
P–12–0194 ..	02/22/2012	05/21/2012	CBI	(G) Hydraulic fluid component	(G) Amines, bis(alkyl). 3-[[bis (alkylalkoxy) phosphinothioyl] thio]-2-alkylalkananoates.
P–12–0195 ..	02/22/2012	05/21/2012	CBI	(G) Oil additive	(G) Amines, bis(alkyl) o,o-di-alkyl phosphorodithioates.
P–12–0196 ..	02/23/2012	05/22/2012	CBI	(G) Destructive use	(G) Aromatic distillation bottoms.

TABLE I—19 PMNS RECEIVED FROM 02/20/12 TO 02/29/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/Importer	Use	Chemical
P–12–0197 ..	02/24/2012	05/23/2012	CBI	(G) Resin for waterborne automotive & industrial coatings.	(G) Isocyanate polyether polymer.
P–12–0198 ..	02/27/2012	05/26/2012	CBI	(G) Polyurethane surfactant	(G) Siloxane polyalkyleneoxide copolymer.
P–12–0199 ..	02/27/2012	05/26/2012	Lubrigreen Biosynthetics	(G) Biobased lubricant base oil	(S) 9-octadecenoic acid (9z)-, homopolymer, 2-methylpropyl ester, isomerized.
P–12–0200 ..	02/27/2012	05/26/2012	Lubrigreen Biosynthetics	(G) Lubricant base oil	(S) Fatty acids, $C_{8–18}$ and C_{18}-unsaturated, reaction products with isomerized oleic acid homopolymer iso-bu ester.
P–12–0201 ..	02/27/2012	05/26/2012	Lubrigreen Biosynthetics	(G) Lubricant base oil	(S) Coconut oil, reaction products with isomerized oleic acid homopolymer iso-bu ester.
P–12–0202 ..	02/27/2012	05/26/2012	CBI	(S) Fluorescent brightener for use in cellulosic paper applications.	(G) Triazinylaminostilbene.
P–12–0203 ..	02/27/2012	05/26/2012	CBI	(S) Fluorescent brightener for use in cellulosic paper applications.	(G) Triazinylaminostilbene.
P–12–0204 ..	02/27/2012	05/26/2012	Archer Daniels Midland Company.	(S) Biodiesel; fuel extenders; machine lubricants; components in synthetic lubricants.	(S) Soybean oil, oleic acid-high.
P–12–0205 ..	02/28/2012	05/27/2012	CBI	(G) Lubricant additive	(G) Triethanolamine oleate ester.
P–12–0206 ..	02/28/2012	05/27/2012	DIC International (USA) LLC	(G) Additive for pigments and inks.	(G) Reaction products of sulfonated, hydrogenated rosin and copper phthalocyanine with mixed chlorides.
P–12–0207 ..	02/29/2012	05/28/2012	CBI	(G) Additive for industrial greases	(G) Amines, alkyl, compounds. with 1,3,4-thiadiazolidine-2,5-dithione (1:1).

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—10 NOCS RECEIVED FROM 02/20/12 TO 2/29/12

Case No.	Received date	Commencement notice end date	Chemical
P–09–0295 ..	02/28/2012	01/29/2012	(G) Copolymer of the esters of acrylic acid and methacrylic acid.
P–09–0296 ..	02/28/2012	01/29/2012	(G) Acrylic acid esters and methacrylic acid esters copolymer, compound with aminoethylpropanol.
P–09–0298 ..	02/28/2012	01/29/2012	(G) Copolymer of acrylic acid and methacrylic acid esters, and vinylcaprolactam, compound with aminomethylpropanol.
P–10–0200 ..	02/23/2012	01/31/2012	(G) Hydroxypropyl methacrylate, reaction products with propylene oxide and ethylene oxide, copolymer with N-vinyl caprolactam.
P–10–0507 ..	02/17/2012	02/13/2012	(S) Starch, oxidized, 2-hydroxy-3-(trimethylammonio)propyl ether, chloride.
P–11–0292 ..	02/23/2012	01/25/2012	(S) D-glucopyronase, oligomeric, decyl octyl glycosides, 2-hydroxy-3-sulfopropyl ethers, sodium salts, polymers with 1,3-dichloro-2-propanol.
P–11–0406 ..	02/21/2012	02/17/2012	(G) Reaction product of ethoxylated alcohol and maleic anhydride.
P–11–0509 ..	02/22/2012	01/28/2012	(G) Etfe, ethylene-tetrafluoroethylene copolymer.
P–11–0637 ..	02/20/2012	02/10/2012	(S) Tin, $C_{16–18}$ and C_{18}-unsaturated fatty acids castor-oil fatty acids complexes.
P–11–0657 ..	02/23/2012	02/13/2012	(S) Boron, trifluoro(tetrahydrofuran)-, (T–4)-, polymer with 3-methyl-3-[(2,2,3,3,3-pentafluoropropoxy)methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol (2:1), polymer with .alpha.-hydroxy-.omega.-hydroxypoly(oxy-1,2-ethanediyl) and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: March 6, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–8553 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9658–7]

Notification of Two Public Teleconferences of the Science Advisory Board Biogenic Carbon Emissions Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Biogenic Carbon Emissions Panel to discuss the Panel's draft report on EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011).

DATES: The public teleconferences will be held on May 23, 2012 from 1 p.m. to 4 p.m. and May 29, 2012 from 1 p.m. to 4 p.m. (Eastern Daylight Time).

ADDRESSES: The public teleconferences will take place by phone only.

FOR FURTHER INFORMATION: Any member of the public wishing further information regarding these public teleconferences may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2073 or via email at *stallworth.holly@epa.gov*. General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Biogenic Carbon Emissions Panel will hold two public teleconferences to discuss the Panel's draft report on EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011). The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of Atmospheric Programs (OAP) in EPA's Office of Air and Radiation requested SAB review of EPA's draft accounting framework. As noticed in 76 FR 61100–61101, the SAB Biogenic Carbon Emissions Panel held a public meeting on October 25–27, 2011 to review and discuss its advice on EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011). As noticed in 76 FR 80368–80369, the Panel discussed its draft reports by teleconferences on January 27, 2012 and March 20, 2012. The Panel will continue its discussion of a revised draft report during the teleconferences on May 23, 2012 and May 29, 2012.

Availability of the Meeting Materials: An agenda and draft report will be posted on the SAB Web site *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activities/Accounting%20for%20biogenic%20CO2?OpenDocument* prior to the May 23, 2012 teleconference. EPA's review document, charge to the Panel and other background materials are also available at the URL above. For questions concerning EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011), please contact Dr. Jennifer Jenkins, Climate Change Division, at *jenkins.jennifer@epa.gov* or 202–343–9361 or Sara Ohrel at *ohrel.sara@epa.gov* or 202–343–9712.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to charge to the panel, EPA review documents, or this advisory activity. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB panel to consider or if it relates to the clarity or accuracy of the technical information.

Oral Statements: In general, individuals or groups requesting an oral presentation at these teleconferences will be limited to three minutes per speaker. Interested parties should contact Dr. Holly Stallworth, DFO, in writing (preferably via email), at the contact information noted above, by May 18, 2012 to be placed on the list of public speakers for the May 23, 2012 teleconference and by May 25, 2012 to be placed on the list of speakers for the May 29, 2012 teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office by May 18, 2012 to be considered for the May 23, 2012 teleconference and by May 25, 2012 to be considered for the May 29, 2012 teleconference. Written statements should be supplied to the DFO in electronic format via email (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 4, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–8716 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9658–4]

Notice of Proposed Administrative Cashout Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; RE: Hassan Barrel Company

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed administrative settlement, subject to review and comment by the public pursuant to this Notice, under CERCLA concerning the Hassan Barrel Superfund Site (''Site'') in Fort Wayne,

Allen County, Indiana. The settlement resolves a United States Environmental Protection Agency (EPA) claim under Sections 106, 107(a), and 122 of CERCLA, against two parties who have executed binding certifications of their consent to the settlement, as listed below in the Supplemental Information Section.

The settlement requires the settling party to pay a total of $25,000 to the EPA Hazardous Substances Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard Chicago, Illinois.

DATES: Comments must be submitted on or before May 11, 2012.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard Chicago, Illinois. In addition, a copy of the proposed settlement also may be obtained from Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard Chicago, Illinois 60604–3590, or by calling (312) 886–7949. Comments should reference the Hassan Barrel Site, Wayne County, Indiana and EPA Docket No. V=W=11–C–991 and should be addressed to Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The party listed below has executed a binding certification of his consent to participate in the settlement.

Alan D. Hersh

Hassan Barrel Company.

FOR FURTHER INFORMATION CONTACT: Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard Chicago, Illinois, 60604, or call (312) 886–7949.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended.

Dated: March 22, 2012.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. 2012–8728 Filed 4–10–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Thursday, April 26, 2012, from 8:45 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION: *Agenda:* The agenda will be focused on the results of the FDIC's Model Safe Accounts pilot, prepaid cards and mobile financial services. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This ComE–IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/advisorycommittee.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link.

For optimal viewing, a high speed Internet connection is recommended. The ComE–IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: April 6, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2012–8652 Filed 4–10–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2012–03]

Filing Dates for The New Jersey Special Election in The 10th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: New Jersey has scheduled elections on June 5, 2012, and November 6, 2012, to fill the U.S. House seat in the 10th Congressional District held by the late Representative Donald M. Payne.

Committees required to file reports in connection with the Special Primary Election on June 5, 2012, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on November 6, 2012, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the New Jersey Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on May 24, 2012; a 12-day Pre-General Report on October 25,

2012; and a 30-day Post-General Report on December 6, 2012. (See chart below for the closing date for each report).

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on May 24, 2012. (See chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings in July and October. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2012 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New Jersey Special Primary or Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the New Jersey Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New Jersey Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,700 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR NEW JERSEY SPECIAL ELECTION

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Committees Involved in *Only* the Special Primary (06/05/12) Must File:			
Pre-Primary	05/16/12	05/21/12	05/24/12
July Quarterly	06/30/12	07/15/12	[2] 07/15/12
Committees Involved in Both the Special Primary (06/05/12) and Special General (11/06/12) Must File:			
Pre-Primary	05/16/12	05/21/12	05/24/12
July Quarterly	06/30/12	07/15/12	[2] 07/15/12
October Quarterly	09/30/12	10/15/12	10/15/12
Pre-General	10/17/12	10/22/12	10/25/12
Post-General	11/26/12	12/06/12	12/06/12
Year-End	12/31/12	01/31/13	01/31/13
Committees Involved in *Only* the Special General (11/06/12) Must File:			
Pre-General	10/17/12	10/22/12	10/25/12
Post-General	11/26/12	12/06/12	12/06/12
Year-End	12/31/12	01/31/13	01/31/13

[1] These dates indicate the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

On behalf of the Commission.

Dated: Apil 5, 2012.

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2012–8634 Filed 4–10–12; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010099–055.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compañía Chilena de Navegación Interoceánica S.A.; Compania SudAmericana de Vapores S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW.; Washington, DC 20006–1600.

Synopsis: The amendment deletes MISC Berhad from the agreement.

Agreement No.: 011284–070.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq. and Donald J. Kassilke, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Crowley Latin America Services, LLC; Crowley Caribbean Services, LLC; and Alianca Navegacao e Logistics Ltda. as parties to the agreement.

Agreement No.: 011689–014.

Title: Zim/CSCL Slot Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; China Shipping Container Line Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Tara L. Leiter, Esquire; Blank Rome LLP; 600 New Hampshire Avenue NW., Washington, DC 20037.

Synopsis: The amendment would delete a service between the Far East and North Europe and replace it with a service between the Far East and the Mediterranean.

Agreement No.: 011962–008.

Title: Consolidated Chassis Management Pool Agreement.

Parties: The Ocean Carrier Equipment Management Association and its member lines; the Association's subsidiary Consolidated Chassis Management LLC and its affiliates; Chicago Ohio Valley Consolidated Chassis Pool LLC; China Shipping Container Lines Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay; Matson Navigation Co.; Mediterranean Shipping Co., S.A.; Midwest Consolidated Chassis Pool LLC; Norasia Container Lines Limited; Westwood Shipping Lines; and Zim Integrated Shipping Services Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; Cozen O'Conner; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add Crowley Latin America Services, LLC; Crowley Caribbean Services, LLC; and Alianca Navegacao e Logistics Ltda. as parties to the agreement.

Agreement No.: 012135–001.

Title: EUKOR Car Carriers, Inc./FOML Space Charter.

Parties: EUKOR Car Carriers, Inc. and FESCO Ocean Management Limited

Filing Parties: Neal M Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue NW., 10th Floor; Washington, DC 20036

Synopsis: The amendment adds Port Everett, WA to the geographic scope of the agreement.

Agreement No.: 012163.

Title: MSC/CMA CGM U.S. East Coast—East Coast South America Service Space Charter Agreement.

Parties: Mediterranean Shipping Company S.A. and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement would authorize MSC to charter space to CMA CGM in the trade between the U.S. East Coast and the East Coast of South America and the Bahamas.

Dated: April 6, 2012.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–8767 Filed 4–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *HCBF Holding Company, Inc.,* Palm City, Florida, to become a bank holding company by acquiring Harbor Community Bank, FSB, Indiantown, Florida, upon its conversion to a state nonmember bank.

Board of Governors of the Federal Reserve System.

Dated: April 6, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8658 Filed 4–10–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–9966–N]

Risk Adjustment Meeting—May 7, 2012 and May 8, 2012

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting on the risk adjustment program, which is open to the public. The purpose of this meeting is to provide information to States, issuers, and interested parties about the risk adjustment program. This meeting will include the following topics: The risk adjustment model, calculation of plan average actuarial risk, calculation of payments and charges, data collection approach, and the schedule for running risk adjustment. This meeting will provide an opportunity to hear from a variety of interested parties as the Federal risk adjustment methodology is being developed and we are working through operational issues.

DATES: *Meeting Dates:* May 7th from 9 a.m. to 5 p.m. and May 8th from 8:30 a.m. to 12:30 p.m. Eastern Standard Time (EST).

Deadline for Meeting Registration and Comments: April 30th, 2012, 5 p.m., EST.

Deadline for Requesting Special Accommodations: April 30th, 2012, 5 p.m., EST.

ADDRESSES: *Meeting Location:* Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Meeting Registration: To register, visit the Resources page on the CCIIO Web site at *http://cciio.cms.gov/resources/other/index.html#fm.Written Comments:* Jeffrey Davis, Center for Consumer Information and Insurance Oversight, CMS, 200 Independence Avenue SW., Washington, DC 20201, Phone: 301–492–4270, Fax: 301–492–4462, or contact by email at *RAspringmeeting@cms.hhs.gov.* Written comments must be submitted in Microsoft Word format.

FOR FURTHER INFORMATION CONTACT: Please send inquiries about the logistics of the meeting to *logistics@isomglobal.com* and about the content of the meeting to *RAspringmeeting@cms.hhs.gov.* Press inquiries are handled through CCIIO's Press Office at (202) 690–6343.

SUPPLEMENTARY INFORMATION:

I. Background

This notice announces a meeting on the risk adjustment program required under section 1343 of the Affordable Care Act. The purpose of this meeting is to provide information to States, issuers, and interested parties about the risk adjustment program. This meeting will provide an opportunity to hear from a variety of interested parties as the Federal risk adjustment methodology is being developed and we are working through operational issues.

II. Meeting Agenda

The Spring Risk Adjustment Meeting will provide information to States, issuers, and interested parties about the risk adjustment program. The Risk Adjustment Spring Meeting will focus on: the risk adjustment model, calculation of plan average actuarial risk, calculation of payments and charges, data collection approach, and the schedule for running risk adjustment.

The Risk Adjustment Meeting will convene stakeholders including State governments, industry representatives, and other interested parties. The Risk Adjustment Meeting will provide the public with further detail about the risk adjustment methodology that is currently being developed by HHS and the operational framework for risk adjustment when HHS is operating the program on behalf of a State. In addition, the Risk Adjustment Meeting will provide stakeholders with an opportunity to communicate with HHS about the risk adjustment program.

The meeting is open to the public, but attendance is limited to the space available. There are capabilities for remote access. Persons wishing to attend this meeting must register by the date listed in the **DATES** section above, and by visiting the CCIIO Web page listed in the **ADDRESSES** section above. Registration will be on a first-come, first-serve basis, limited to three attendees per organization.

Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: April 5, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–8771 Filed 4–10–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Reporting Patient Safety Events Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: Patient Safety Organizations (PSOs) listed by the Agency for Healthcare Research and Quality (AHRQ) create a safe environment for health care providers to collect, aggregate, and analyze data without fear of legal discovery. Hospitals struggle to increase internal incident reporting, especially by busy physicians and nurses, and to create effective systems for the quality and risk management staff to do root cause analyses and follow-up. The ''Reporting Patient Safety Events Challenge'' asks multi-disciplinary teams to develop an application that facilitates the reporting of patient safety events, whether implemented in hospital or ambulatory settings. The solution needs to make it easier for any individual to file a report electronically, using Common Formats but allowing for additional elements and narratives. It must allow the hospital quality and risk management staff to add information from follow-up investigation, submit reports as appropriate to PSOs, the state, or the FDA (which may differ, and need to be tracked separately), and track follow-up activities.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES: Effective on April 11, 2012. Challenge submission period ends July 23, 2012, 11:59 p.m. et.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866; Wil Yu, 202–690–5920.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The ''Reporting Patient Safety Events Challenge'' asks multi-disciplinary teams to develop an application that facilitates the reporting of patient safety events, whether implemented in hospital or ambulatory settings. This application would:

- Increase the ease of reporting patient safety events to the provider or parent organization;
- Enable providers to import relevant EMR, PHR, and other electronic information, including screen shots, to the patient safety report and, in turn, submit an AHRQ Common Formats-compliant report to one or more PSOs;
- Capture useful demographic and other relevant information from each patient including age, gender, race, and relevant diagnoses;
- Capture information about the type of organization submitting the report using AHRQ's PSO Information format;
- Reduce burden of reporting by enabling the provider or parent organization to have the option of submitting information in the patient safety report to non-PSO public health or health oversight organizations, including state or federal programs or accrediting or certifying bodies.
- Be platform-agnostic; and
- Leverage and extend NwHIN standards and services including, but not limited to, transport (Direct, web services), content (Transitions of Care, CCD/CCR), and standardized vocabularies.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules

promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants

To register for this challenge participants should:

- Access the *www.challenge.gov* Web site and search for the ''Reporting Patient Safety Events Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2challenge.org/onc-i2-challenges/*.
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize

- *First Prize:* $50,000.
- *Second Prize:* $15,000.
- *Third Prize:* $5,000.

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The ONC review panel will make selections based upon the following criteria:

1. Effectiveness of the system in facilitating patient safety event reporting including its compliance with AHRQ's Common Formats.

2. Usability and design from the standpoint of all stakeholders.

3. Ability to integrate with electronic health records and other HIT data sources.

4. Creativity and innovation.

5. Leverage NwHIN standards including transport, content, and vocabularies.

Additional Information

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Authority: 15 U.S.C. 3719.

Dated: April 5, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–8758 Filed 4–10–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–245]

Expanded Charge for Peer Review of the NIOSH document Titled: ''Criteria for a Recommended Standard: Occupational Exposure to Diacetyl and 2,3-pentanedione''

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Expanded Charge for Peer Review.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is undergoing peer review for the draft document, ''*Criteria for a Recommended Standard: Occupational Exposure to Diacetyl and 2,3-pentanedione.*'' NIOSH held a public meeting on August 26, 2011 in Washington, DC [76 FR 44338] to discuss and obtain comments on the draft document. Public comments were accepted into the NIOSH docket from August 12, 2011- November 18, 2011 [76 FR 64353]. The draft document and all public comments received are posted on the Internet at: *http://www.cdc.gov/niosh/docket/archive/docket245.html* for Docket number NIOSH–245. After consultation with the Occupational Safety and Health Administration, Department of Labor (OSHA/DOL), NIOSH has asked the peer reviewers seven additional questions for consideration which are posted here: *http://www.cdc.gov/niosh/review/peer/HISA/diacetyl-pr.html*.

This entry serves as notice of the expanded charge to peer reviewers for this draft document.

FOR FURTHER INFORMATION CONTACT: Lauralynn Taylor McKernan, ScD CIH, NIOSH, 4676 Columbia Parkway C–32, Cincinnati, OH 45226, telephone (513) 533–8542, Fax (513) 533–8230, email *LMcKernan@cdc.gov*.

Dated: April 2, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–8685 Filed 4–10–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Development and Testing of a Clinic-Based Intervention to Increase Dual Protection against Unintended Pregnancy and STDs among High Risk Female Teens, FOA DP12–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Dates: Time and Date:

11 a.m.–5 p.m., May 8, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Development and Testing of a Clinic-Based Intervention to Increase Dual Protection against Unintended Pregnancy and STDs among High Risk Female Teens, FOA DP12–001, initial review.''

Contact Person For More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 1, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8660 Filed 4–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

TIME AND DATE: 8 a.m.–2:50 p.m., May 2, 2012.

PLACE: CDC, Global Communications Center, 1600 Clifton Road NE., Building 19, Auditorium B3, Atlanta, Georgia 30333.

STATUS: Open to the public, limited only by the space available.

PURPOSE: The BSC, OID, provides advice and guidance to the Secretary, Department of Health and Human Services; the Director, CDC; the Director, OID; and the Directors of the National Center for Immunization and Respiratory Diseases, the National Center for Emerging and Zoonotic Infectious Diseases, and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, in the following areas: strategies, goals, and priorities for programs; research within the national centers; and overall strategic direction and focus of OID and the national centers.

MATTERS TO BE CONSIDERED: The meeting will include reports from the BSC OID working groups, brief updates from the infectious disease national centers, and focused discussions on CDC's safe water activities, immunization infrastructure, and sexually transmitted diseases.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road NE., Mailstop D10, Atlanta, Georgia 30333, Telephone: (404) 639–4461.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8682 Filed 4–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Uniform Project Description (UPD) Program Narrative Format for Discretionary Grant Application Forms.

OMB No.: 0970–0139

Description: The proposed information collection would extend the Administration for Children and Families' (ACF) Uniform Project Description (UPD). The UPD provides a uniform grant application format for applicants to submit project information in response to ACF discretionary funding opportunity announcements. ACF uses this information, along with other OMB-approved information collections (Standard Forms), to evaluate and rank applications. Use of the UPD helps to protect the integrity of ACF's award selection process. All ACF discretionary grant programs are required to use this application format. The application consists of general information and instructions; the Standard Form 424 series, which requests basic information, budget information, and assurances; the Project Description that requests the applicant to describe how program objectives will be achieved; and other assurances and certifications. Guidance for the content of information requested in the Project Description is found in OMB Circular A–102; 2 CFR, Part 215; 2 CFR, Part 225; 2 CFR, Part 230; 45 CFR, Part 74; and 45 CFR, Part 92.

Respondents: Applicants to ACF Discretionary Funding Opportunity Announcements.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF Uniform Project Description	5,500	1	60	330,000

Estimated Total Annual Burden Hours: 330,000

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

ACF specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–8589 Filed 4–10–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0221]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study on Consumer Responses to Labeling Statements on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by May 11, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Experimental Study on Consumer Responses to Labeling Statements on Food Packages.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Study on Consumer Responses to Labeling Statements on Food Packages—(OMB Control Number 0910–NEW)

I. Background

The Nutrition Labeling and Education Act requires almost all packaged foods to bear nutrition labeling in the form of the Nutrition Facts label. The law also allows manufacturers to provide other nutrition information on labels in the form of various types of statements, including claims, as long as such statements comply with the regulatory limits that govern the use of each type of statement. There are three types of claims that the food industry can voluntarily use on food labels: (1) Health claims, (2) nutrient content claims (e.g., ''Low fat''), and (3) structure/function claims (e.g., ''Calcium builds strong bones.''). Although the different types of claims are regulated differently, they all must be truthful and not misleading (Ref. 1).

With the increased public interest in identifying healthier foods, U.S. food processors have been adding nutritional information in the form of nutrition symbols to food labels in addition to claims. Examples of nutrition symbols that have been used or suggested include nutrient-specific disclosures (e.g., ''Guideline Daily Amounts'') (Ref. 2), calorie declarations (Ref. 3), summary product rating (e.g., ''Smart Spot'') (Ref. 4), a hybrid summary indicator with nutrient-specific disclosure (e.g., ''Sensible Solution: Good Source of Calcium, Good Sources of 8 Vitamins and Minerals'') (Ref. 5), the Facts-Up-Front icon, with and without positive nutrients (Ref. 6), and the symbol recommended by the Institute of Medicine (Ref. 7). Claims related to non-nutritional product characteristics are also used in food labeling. The claims may feature, among other things, statements about how foods are grown or made (e.g., ''Organic'' and ''All Natural'') or absence of a substance (e.g., ''Gluten-free'').

Many consumers use claims and the Nutrition Facts label in food choice decisions (Refs. 8 through 10). While some products carry only a single labeling statement (e.g., either one claim or one symbol) on their packages, many products carry two or more labeling statements. In addition, on the same package the attributes of one statement may differ from those of other statements in terms of featured nutrient, type of claim, framing of statement, nature of statement, and presentation of statement. For example, a package may display one or more statements such as symbols relating to nutrition content, statements in words relating to the presence of certain nutrients, statements in words relating to the absence of other nutrients, statements in words describing the health benefits of consuming foods containing or not containing certain nutrients, and statements in words describing how the product was produced. Moreover, all of those symbols and statements are distributed in various places on the package in different font sizes and colors.

There exists a large body of literature on the impacts of different types of labeling statements on consumer perceptions and choices of products (Refs. 11 and 12). The majority of the research, including the consumer research that the Agency has previously conducted (Refs. 13 and 14), has focused on single labeling statements by eliciting study participants' reactions to variants of a given statement. An advantage of this research approach is that it helps isolate the effects of individual statements and avoid potential confounding effects caused by the presence of other statements. A disadvantage of this research approach, however, is that it does not necessarily reflect the labels consumers see in the marketplace. In particular, the existing

literature provides little information about how the coexistence of two or more different labeling statements affects product perceptions and choices. This information, however, is critical for understanding the roles played by labeling statements in dietary decisions.

Research suggests consumer product perceptions and purchase decisions can be influenced by labeling statements and different labeling statements may have different influences (Refs. 11 through 14). Therefore, FDA, as part of its effort to promote public health, proposes to use this study to explore consumer responses to food labels that bear multiple labeling statements. Specifically, the study plans to examine: (1) Consumer responses to food labels that exhibit various combinations of the number and type of statements, (2) whether and how consumer responses to one label characteristic may be affected by the other characteristic (i.e., the interactions between different characteristics of labeling statements), and (3) whether and how labeling statements affect consumers' use of the Nutrition Facts label.

The proposed collection of information is a controlled randomized experimental study. The study will use a 15-minute Web-based survey to collect information from 4,000 English-speaking adult members of an online consumer panel maintained by a contractor. The study will aim to produce a sample that reflects the U.S. Census on gender, education, age, and ethnicity/race.

The study will randomly assign each of its participants to view two label images from a set of food labels that will be created for the study. These images will be systematically varied in the following aspects: (1) Number of statements (ranging from none to three); (2) featured nutrient and food product (fat—snack bar, sodium—chips, or fiber—breakfast cereal); (3) type of statement (text such as ''Supports Cardiovascular Functioning'' or graphic, specifically the Facts-Up-Front icons and one of the icon concepts proposed by the Institute of Medicine) (Refs. 13 and 14); and (4) nature of featured product attribute (such as ''Supports the Immune System'' or ''All Natural''). With regard to claims, the study will focus on examples of nutrient content claims and structure/function claims that can be found on many food packages (Ref. 15). All label images will be mockups resembling food labels that may be found in the marketplace. Images will show product identity (e.g., tortilla chips) but not any real or fictitious brand name. The study will provide interested participants access to the Nutrition Facts label but not together with a product image.

The survey will ask its participants to view label images and answer questions about their perceptions and reactions related to the viewed product and label. Product perceptions (e.g., healthfulness, potential health benefits, levels of nutrients, and taste) and label perceptions (e.g., helpfulness and credibility) will constitute the measures of responses in the experiment. To help understand the data, the survey will also collect information about participants' background, such as familiarity with and consumption, purchase, and perception of the categories of food included in the study; awareness and knowledge of nutrients; dietary interests; motivation regarding label use and health literacy; and health status and demographic characteristics.

The study is part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. Results of the study will be used primarily to enrich the Agency's understanding of how multiple claims and other labeling statements on food packages may affect how consumers perceive a product or a label, which may in turn affect their dietary choices. Results of the study will not be used to develop population estimates.

In the **Federal Register** of April 13, 2011 (76 FR 20675), FDA published a 60-day notice requesting public comment on the proposed collection of information. The Agency received four responses to the notice. One of the responses was outside of the scope of the proposed collection of information described in the 60-day notice and is not addressed here. The remaining three responses contained multiple comments. These comments, and the Agency's responses, are discussed in the following paragraphs.

(Comment 1) Two comments suggested that FDA provide mock stimuli for public comment prior to initiating the study.

(Response) We appreciate the suggestion for the Agency to provide the experimental stimuli for public comment prior to initiating the study. Per the PRA, a copy of the proposed experimental stimuli is provided in the Appendix of the supporting document.

(Comment 2) One comment suggested that the study include questions to probe how non-misleading nutrient content, health, and structure/function claims may improve consumers' understanding of a product's nutritional attributes.

(Response) We agree and have included measures to assess how participants' understanding of a product's nutritional attributes may be affected by non-misleading claims.

(Comment 3) Two comments expressed concerns about four questions proposed in the draft questionnaire. Two of the questions of concern asked if participants had ever heard or read that certain foods (unnamed) may help lower the risk of seven different types of health problems, such as cancer, diabetes, and others. The third and fourth questions of concern asked whether specific nutrients (e.g., calcium, potassium, etc.) or a particular food product, respectively, might help reduce the risk of the same health problems asked about in the other two questions. Both comments suggested that such questions would demonstrate that ''consumers misinterpret structure function claims as health claims'' and argued that such a demonstration would be inconsistent with the stated purpose of the information collection.

(Response) FDA does not agree that the proposed questions on participants' prior knowledge of foods' health benefits and inferences from reading a label would bias the study toward health claims rather than structure/function claims. Since label inferences can be affected by what consumers already know or believe about a food, the prior knowledge questions are included to help understand study participants' reactions to labeling statements. The question about perceived health benefits of a product is one of the most important measures of label inferences. The Agency's previous research has shown that consumer inferences of the health benefits of a product do not necessarily vary between types of labeling statements (i.e., health claims, structure/function claims, and nutrient content claims). Hence, this question is not expected to produce erroneous data with respect to inferences about structure/function claims.

(Comment 4) One comment suggested that FDA consider including an experimental condition in which participants would view a label bearing up to three different labeling statements because consumers are routinely exposed to this amount of information on food packages. In the originally proposed design, FDA included label manipulations involving only up to two different labeling statements.

(Response) We agree with the comment and have revised the study to include experimental conditions containing up to three labeling statements on a label.

(Comment 5) One comment suggested including an assessment of how the

various labeling statements affect whether participants intend to purchase the product or not.

(Response) As we proposed in the draft questionnaire, we will include a question about purchase intention.

(Comment 6) One commenter noted that prior research has shown that the appearance of packaging and statements on the front of the package can increase the likelihood of consumers using the Nutrition Facts label.

(Response) FDA agrees that information about consumers' use of the Nutrition Facts label is important and plans to record and analyze how likely the study's participants are to consult the Nutrition Facts label when viewing claims and other statements on the front label of a product.

(Comment 7) One comment questioned the relevance of asking participants to rate the safety or trustworthiness of a product based on the label information they view.

(Response) Although the label content of a product may not be intended to influence consumer assumptions regarding the safety of a product, prior research has demonstrated that such influence may occur (Ref. 16). Therefore, it would be useful to understand whether similar reactions happen in a multiclaim context. Nevertheless, the products that the proposed study plans to include (breakfast cereal, chips, and snack bars) are generally not associated with safety issues that may lead to foodborne illness or other safety hazards. Therefore, the study will omit the proposed question on perceived product safety. On the other hand, the Agency has determined that it is still important and relevant to elicit study participants' perceptions of the trustworthiness of various labeling statements (not foods, as stated in the comment), especially when these statements feature different nutrients or product benefits. Thus, the study will keep the proposed question on perceived trustworthiness of the label.

(Comment 8) One comment suggested that the study ask about participants' interest in nutrients for which there is concern of inadequate intake among Americans. The comment recommended replacing Vitamin D and omega-3 fatty acids for Vitamins A and C, as proposed in the previous draft questionnaire.

(Response) We agree with the comment and have incorporated the suggestion in the revised questionnaire.

(Comment 9) One comment suggested that a plausible distractor or wrong choice be included in the question about the nutrients participants try to limit or increase in their diet to test the validity of the responses.

(Response) We disagree with the comment. Our previous surveys indicate respondents can provide valid responses to these questions (for example, Ref. 17). Furthermore, we are concerned that the validity of the responses would suffer if a distractor or wrong choice is included because participants may be confused by the presence of such options in the question.

To help design and refine the questionnaire, FDA plans to conduct cognitive interviews by screening 72 panelists in order to obtain 9 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hour), and each cognitive interview is expected to take 1 hour. The total for cognitive interview activities is 15 hours (6 hours + 9 hours). Subsequently, we plan to conduct pretests of the questionnaire before it is administered in the study. We expect that 1,600 invitations, each taking 2 minutes (0.033 hour), will need to be sent to panelists to have 200 of them complete a 15-minute (0.25 hour) pretest. The total for the pretest activities is 103 hours (53 hours + 50 hours). For the survey, we estimate that 32,000 invitations, each taking 2 minutes (0.033 hour) to complete, will need to be sent to the consumer panel to have 4,000 of its members complete a 15-minute (0.25 hour) questionnaire. The total for the survey activities is 2,056 hours (1,056 hours + 1,000 hours). Thus, the total estimated burden is 2,174 hours. FDA's burden estimate is based on prior experience with research that is similar to this proposed study.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
Cognitive interview screener	72	1	72	0.083 (5 minutes)	6
Cognitive interview	9	1	9	1 hour	9
Pretest invitation	1,600	1	1,600	0.033 (2 minutes)	53
Pretest	200	1	200	0.25 (15 minutes)	50
Survey invitation	32,000	1	32,000	0.033 (2 minutes)	1,056
Survey	4,000	1	4,000	0.25 (15 minutes)	1,000
Total					2,174

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**)

1. U.S. Food and Drug Administration, ''Claims That Can Be Made for Conventional Foods and Dietary Supplements,'' September 2003. Available at *http://www.fda.gov/Food/LabelingNutrition/LabelClaims/ucm111447.htm.*

2. Kellogg's, ''How to Read a Nutrition Label,'' 2010. Available at *http://www.kelloggs.com/en_US/the-benefits-of-cereal/how-to-read-a-nutrition-label.html.*

3. PepsiCo, ''Nutrition Labeling,'' 2010. Available at http://www.pepsico.com/Purpose/Human-Sustainability/Nutrition-Labeling.html.

4. Schmit, J., ''PepsiCo Labels Some of Its Snacks 'Smart,' '' *USA Today,* September 2, 2004. Available at *http://www.usatoday.com/money/industries/food/2004–09–02-smart-spot_x.htm.*

5. Kraft Foods, ''Sensible Solution,'' 2010. Available at *http://www.kraftrecipes.com/kf/HealthyLiving/SensibleSolution/SensibleSolution_Landing.aspx.*

6. FactsUpFront.org, ''Facts Up Front,'' 2011. Available at *http://factsupfront.com/.*

7. Institute of Medicine, ''Front-of-Package Nutrition Rating Systems and Symbols: Promoting Healthier Choices,'' 2011. Available at *http://www.iom.edu/Reports/*

2011/Front-of-Package-Nutrition-Rating-Systems-and-Symbols-Promoting-Healthier-Choices.aspx.

8. Centers for Disease Control and Prevention, ''2005–2006 National Health and Examination Survey Questionnaire, Diet Behavior and Nutrition section,'' Unpublished results of questions DBQ.750 and DBQ.780. Questionnaire available at *http://www.cdc.gov/nchs/data/nhanes/nhanes_05_06/sp_dbq_d.pdf.*

9. U.S. Food and Drug Administration, ''2008 Health and Diet Survey,'' March 20, 2010. Available at *http://www.fda.gov/Food/ScienceResearch/ResearchAreas/ConsumerResearch/ucm193895.htm.*

10. Food Marketing Institute, ''2009 U.S. Grocery Shopper Trends Survey,'' Washington, DC 2009.

11. Drichoutis, A.C., P. Lazaridis, and R.M. Nayga, ''Consumers' Use of Nutritional Labels: A Review of Research Studies and Issues,'' *Academy of Marketing Science Review,* 2006(9), 2006. Available at *http://www.amsreview.org/articles/drichoutis09-2006.pdf.*

12. Lähteenmäki, L., P. Lampila, K. Grunert, et. al, ''Impact of Health-Related Claims on the Perception of Other Product Attributes,'' *Food Policy*, 23: 230–239, 2010.

13. Labiner-Wolfe, J., C.-T. J. Lin, and L. Verrill, ''Effect of Low Carbohydrate Claims on Consumer Perceptions About Food Products' Healthfulness and Helpfulness for Weight Management,'' *Journal of Nutrition Education and Behavior*, 42(5): 315–320, 2010.

14. Roe, B., A.S. Levy, and B.M. Derby, ''The Impact of Health Claims on Consumer Search and Product Evaluation Outcomes: Evidence From FDA Experimental Data,'' *Journal of Public Policy and Marketing*, 18(1): 89–105, 1999.

15. LeGault, L., M.B. Brandt, N. McCabe, et. al, ''2000–2001 Food Label and Package Survey: An Update on Prevalence of Nutrition Labeling and Claims on Processed, Packaged Foods,'' *Journal of the American Dietetic Association*, 104(6): 952–958, 2004.

16. Kapsak, W.R., D. Schmidt, N.M. Childs, et. al, ''Consumer Perceptions of Graded, Graphic and Text Label Presentations for Qualified Health Claims,'' *Critical Reviews in Food Science and Nutrition*, 48: 248–256, 2008.

17. U.S. Food and Drug Administration, ''Health and Diet Survey: Dietary Guidelines Supplement—Report of Findings (2004 and 2005), 2008. Available at *http://www.fda.gov/Food/ScienceResearch/ResearchAreas/ConsumerResearch/ucm080331.htm.*

Dated: April 5, 2012.

David Dorsey,

Acting Association Commissioner for Policy and Planning.

[FR Doc. 2012–8699 Filed 4–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0315]

International Conference on Harmonisation; Draft Guidance for Industry on E2C(R2) Periodic Benefit-Risk Evaluation Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''E2C(R2) Periodic Benefit-Risk Evaluation Report.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance updates and combines two ICH guidances, ''E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs'' (E2C guidance) and ''Addendum to E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs'' (addendum to the E2C guidance). The draft guidance describes the format, content, and timing of a periodic benefit-risk evaluation report (PBRER) for an approved drug or biologic. The harmonized PBRER is intended to promote a consistent approach to periodic postmarket safety reporting among the ICH regions and to enhance efficiency by reducing the number of reports generated for submission to the regulatory authorities.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 11, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Regarding the draft guidance: Andrea Feight, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4494, Silver Spring, MD 20993–0002, 301–796–0152; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210. Regarding the ICH: Michelle Limoli, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 3506, Silver Spring, MD 20993–0002, 301–796–8377.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug

Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of May 19, 1997 (62 FR 27470), FDA published a notice announcing the availability of the E2C guidance. In the **Federal Register** of February 5, 2004 (69 FR 5551), FDA also published the addendum to the E2C guidance to provide needed clarification and additional guidance. Since that time, the pharmacovigilance environment has evolved, prompting reassessment of the role of the periodic safety update report in the spectrum of safety documents submitted to regulatory authorities. This reassessment highlighted several factors that led to consensus for revising the E2C guidance and the addendum to the E2C guidance to enhance their usefulness in light of advances in the field. There has been significant progress in the technology and science of pharmacovigilance, including electronic submission of individual case safety reports to regulatory authorities, automated data mining techniques, more attention to benefit-risk evaluation, greater emphasis on proactive and documented risk management planning, and increasing recognition that meaningful evaluation of important new risk information should be undertaken in the context of a medicinal product's benefits.

In January 2012, the ICH Steering Committee agreed that a draft guidance entitled ''E2C(R2) Periodic Benefit-Risk Evaluation Report'' should be made available for public comment. The draft guidance is the product of the E2C(R2) Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the E2C(R2) Expert Working Group.

The draft guidance describes the format, content, and timing of a PBRER for an approved drug or biologic. The PBRER will serve as a common standard for periodic reporting on approved drugs or biologics among the ICH regions. Once this guidance is finalized, applicants can submit a waiver request for submission of the PBRER in the United States in place of a periodic adverse drug experience report for a new drug application, for an abbreviated new drug application, or for a biologics license application. The harmonized PBRER is intended to promote a consistent approach to periodic postmarket safety reporting among the ICH regions and to enhance efficiency by reducing the number of reports generated for submission to the regulatory authorities.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This draft guidance includes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). In accordance with the PRA, before publication of the final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to previously approved collections of information found in FDA regulations.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: April 6, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8697 Filed 4–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0691]

Guidance on Media Fills for Validation of Aseptic Preparations for Positron Emission Tomography Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Media Fills for Validation of Aseptic Preparations for Positron Emission Tomography (PET) Drugs.'' This guidance is intended to help manufacturers of PET drugs meet the requirements for the Agency's current good manufacturing practice regulations for PET drugs.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, Rm. 6164, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3416.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Media Fills for

Validation of Aseptic Preparations for Positron Emission Tomography (PET) Drugs.'' Most PET drugs are designed for parenteral administration and are produced by aseptic processing. The goal of aseptic processing is to make a product that is free of microorganisms and toxic microbial byproducts, such as bacterial endotoxins. The media fill is the performance of an aseptic manufacturing procedure using a sterile microbiological growth medium in place of the drug solution to test whether the aseptic procedures are adequate to prevent contamination during actual drug production. This guidance takes the form of questions and answers written specifically to help manufacturers comply with the Agency's current good manufacturing practices for PET drugs (21 CFR part 212) regarding media fills.

A draft guidance of the same title was announced in the **Federal Register** on September 30, 2011 (76 FR 60847), and Docket No. FDA 2011–D–0691 was open for comments until December 29, 2011. We received comments from industry and professional societies. We have carefully considered, and where appropriate, we have made corrections, added information, or clarified the information in this guidance in response to the comments or on our own initiative.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on media fills and process simulations for PET drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 212 have been approved under OMB control number 0910–0667.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: April 6, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8702 Filed 4–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No FDA–2012–N–0001]

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues, as well as emerging issues within the scientific community in industry and academia. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of Agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on May 2, 2012, from 9 a.m. to 4 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993. For those unable to attend in person, the meeting will also be Web cast. The link for the Web cast is available at *https://collaboration.fda.gov/scienceboard/.* Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

CONTACT PERSON FOR MORE INFORMATION: Martha Monser, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4286, Silver Spring, MD 20993, 301–796–4627, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Science Board will be provided with an overview of Georgetown University's proposed programs under the Centers for Excellence in Regulatory Science and Innovation (CERSI) initiative. In addition, the Board will also hear about CERSI activities resulting from the Memorandum of Understanding between the National Center for Toxicological Research and the state of Arkansas. The Board will also be provided with an overview of ongoing genomic efforts at FDA as well as an update on Foods activities and an update regarding Scientific Computing efforts.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting.

Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 25, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 17, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 18, 2012.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Martha Monser at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 5, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8701 Filed 4–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Medical Countermeasures Initiative Regulatory Science Symposium

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Medical Countermeasures Initiative Regulatory Science Symposium. The symposium is intended to provide a forum for the exchange of ideas for medical countermeasure development, highlight work on regulatory science as it applies to the development and advancement of medical countermeasures, facilitate innovative directions, and inform stakeholders on medical countermeasure-related scientific progress and accomplishments.

Date and Time: This symposium will be held on Tuesday, June 5 and Wednesday, June 6, 2012, from 8 a.m. to 5:30 p.m. Persons interested in attending the symposium in person or viewing via Web cast must register by Tuesday, May 29, 2012, at 5 p.m. EST.

Location: The symposium will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503, Silver Spring, MD 20993–0002.

Contact: Rakesh Raghuwanshi, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4283, 301–796–4769, FAX: 301–847–8615, email: *Rakesh.Raghuwanshi@fda.hhs.gov*.

Registration: If you wish to attend the symposium or view via Web cast, you must register at *http://www.fda.gov/medicalcountermeasures* by Tuesday, May 29, 2012, at 5 p.m. EST. When registering, you must provide the following information: (1) Your name, (2) title, (3) company or organization (if applicable), (4) mailing address, (5) phone number, and (6) email address.

There is no fee to register for the symposium and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. If you need special accommodations due to a disability, please enter pertinent information in the ''Notes'' section of the electronic registration form when you register.

Dated: April 6, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8695 Filed 4–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Prevalence, Incidence, Epidemiology and Molecular Variants of HIV in Blood Donors in Brazil

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 13, 2012, page 2072, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Prevalence, Incidence, Epidemiology and Molecular Variants of HIV in Blood Donors in Brazil. *Type of Information Collection Request: Reinstatement* (OMB No. 0925–0597). *Need and Use of Information Collection:* Establishing and monitoring viral prevalence and incidence rates, and identifying behavioral risk behaviors for HIV infection among donors are critical steps to assessing and reducing risk of HIV transmission through blood transfusion. Detecting donors with recently acquired HIV infection is particularly critical as it enables characterization of the viral subtypes currently transmitted within the screened population. In addition to characterizing genotypes of recently infected donors for purposes of blood safety, molecular surveillance of incident HIV infections in blood donors serves important public health roles by identifying new HIV infections for anti-retroviral treatment, and enabling documentation of the rates of primary

transmission of anti-viral drug resistant strains in the community. This study is a continuation of a previous research project which enrolled eligible HIV-positive blood donors and analyzed HIV molecular variants and their association with risk.

This previous project was conducted by the NHLBI Retrovirus Epidemiology Donor Study—II (REDS–II) International Brazil program and included not only data collection on HIV seropositive donors but also collection of risk factor data on uninfected donors. The current Recipient Epidemiology and Donor Evaluation Study—III (REDS–III) research proposal is a continuation of the previous REDS–II project at the same four blood centers in Brazil, located in the cities of São Paulo, Recife, Rio de Janeiro and Belo Horizonte, but this time restricted to the study of HIV-positive subjects.

The primary study aims are to continue monitoring HIV molecular variants and risk behaviors in blood donors in Brazil, and to evaluate HIV subtype and drug resistance profiles among HIV-positive donors according to HIV infection status (recent versus long-standing infection), year of donation, and site of collection. Additional study objectives include determining trends in HIV molecular variants and risk factors associated with HIV infection by combining data collected in the previous REDS–II project with that which will be obtained in the planned research activities.

Nucleic acid testing (NAT) for HIV is currently being implemented in Brazil. It will be important to continue to collect molecular surveillance and risk factor data on HIV infections, especially now that infections that might not have been identified by serology testing alone could be recognized through the use of NAT. NAT-only infections represent very recently acquired infections. The NAT assay will be used at the four REDS–III blood centers in Brazil during the planned research activities. In addition, in order to distinguish between recent seroconversion and long-standing infection, samples from all HIV antibody dual reactive donations and/or NAT positive donations will be tested by the Recent Infection Testing Algorithm (RITA) which is based on use of a sensitive/less-sensitive enzyme immunoassay (''detuned'' Enzyme Immunoassay). RITA testing will be performed by the Blood Systems Research Institute, San Francisco, California, USA, which is the REDS–III Central Laboratory.

Subjects will be enrolled for a 5-year period from March 2012 (or when OMB approval is received) through 2017. According to the Brazilian guidelines, blood donors are requested to return to the blood bank for HIV confirmatory testing and HIV counseling. Donors will be invited to participate in the study through administration of informed consent when they return for HIV counseling. Once informed consent has been administered and enrollment has occurred, participants will be asked to complete a confidential self-administered risk factor questionnaire by computer. In addition, a small blood sample will be collected from each HIV-positive participant to be used for the genotyping and drug resistance testing. The results of the drug resistance testing will be communicated back to the HIV-positive participants during an in-person counseling session at the blood center. For those individuals who do not return for confirmatory testing, the samples will be anonymized and sent to the REDS–III Central Laboratory to perform the recent infection testing algorithm (RITA).

This research effort will allow for an evaluation of trends in the trafficking of non-B HIV subtypes and rates of transmission of drug resistant viral strains in low risk blood donors. These data could also be compared with data from similar studies in higher risk populations. Monitoring drug resistance strains is extremely important in a country that provides free anti-retroviral therapy for HIV infected individuals, many of whom have low level education and modest resources, thus making compliance with drug regimens and hence the risk of drug resistant HIV a serious problem.

The findings from this project will add to those obtained in the REDS–II study, allowing for extended trend analyses over a 10-year period and will complement similar monitoring of HIV prevalence, incidence, transfusion risk and molecular variants in the USA and other funded international REDS–III sites in South Africa and China, thus allowing direct comparisons of these parameters on a global level.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Blood Donors 18 years old or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 100; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.40 (including administration of the informed consent form and questionnaire completion instructions); and *Estimated Total Annual Burden Hours Requested:* 40. The annualized cost to respondents is estimated at: $260 (based on $6.50 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Estimated annual number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
100	1	0.40	40

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Simone Glynn, MD, Project Officer/ICD Contact, Two Rockledge Center, Suite 9142, 6701 Rockledge Drive, Bethesda, MD 20892, or call 301–435–0065, or Email your request to: *glynnsa@nhlbi.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 27, 2012.

Keith Hoots,

Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH.

Dated: March 30, 2012.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–8684 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Loan Repayment Grant Review.

Date: May 4, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 4, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8719 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Companion Diagnostics

Date: May 22, 2012

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jeannette F Korczak, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 5, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8721 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Retinal Biology and TBI in Developing Brain.

Date: April 27, 2012.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics.

Date: May 3, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nursing and Related Clinical Sciences Overflow.

Date: May 8, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel and Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Katherine Bent, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, 301–435–0695, *bentkn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 5, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8768 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: May 1, 2012.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4142, MSC7814, Bethesda, MD 20892–7814, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA HL–12–037: Mechanistic Pathways Linking Psychosocial Stress and Behavior (R01).

Date: May 7, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue SW, Washington, DC 20024.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Single Cell Analysis Reviews.

Date: May 8, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Single Cell Analysis Reviews.

Date: May 9, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular Hematology.

Date: May 9, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Single Cell Analysis Reviews.

Date: May 10, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bacterial Pathogenesis.

Date: May 10, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mai.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Development, Stem Cell and Myocardial Regeneration.

Date: May 10, 2012.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4138, MSC 7814, Bethesda, MD 20892, (301)435–1195, *Chengy5@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2012.

Anna P. Snouffer

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8700 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee

Date: May 9, 2012

Time: 8:30 a.m. to 5:30 p.m.

Agenda: The purpose of the meeting is to continue the work of the Committee, which

is to share and coordinate information on existing research activities, and to make recommendations to the National Institutes of Health and other Federal agencies regarding how to improve existing research programs related to breast cancer and the environment. In advance of the meeting, the agenda will be posted on the Web: *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the Committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (i.e. WORD, Rich Text, PDF) may be submitted via email to *ibcercc@niehs.nih.gov.* You do not need to attend the meeting in order to submit comments.

Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral comments you wish to present. Only one representative per organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Oral comments will begin at approximately 4 p.m. on Wednesday, May 9, 2012.

Anyone who wishes to attend the meeting and/or submit comments to the committee is asked to RSVP via email to *ibcercc@niehs.nih.gov.* Comments are delivered to the Contact Person listed on this notice.

Please check the Web for future changes to the agenda or location: *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 3, 2012.

Anna P. Snouffer

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8698 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grants and Implementation Cooperative Agreements.

Date: May 3, 2012.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3264, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Lakshmi Ramachandra, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *Ramachandral@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8696 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 3–4, 2012.

Time: May 3, 2012, 8:30 a.m. to 5 p.m.

Agenda: NICHD Director's Report presentation, NCMRR Director's Report presentation, NIH Blue Ribbon Panel on Rehabilitation presentation and various reports on Medical Research Initiatives.

Place: Hilton Washington/Rockville 1750 Rockville Pike Rockville, MD 20852.

Time: May 4, 2012, 8:30 a.m. to 12 p.m.

Agenda: Other business with NABMRR Board.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ralph M. Nitkin, Ph.D., Director, B.S.C.D., Biological Sciences and Career Development, NCMRR, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Boulevard, Room 2A03, Bethesda, MD 20892–7510, (301) 402–4206, *nitkinr@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/ncmrr.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 4, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8694 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Adolescence and Family Health.

Date: April 18, 2012.

Time: 11:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8687 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pathology of Alzheimer's Disease.

Date: May 7, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.,*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 5, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8723 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Loan Repayment 2012.

Date: May 2, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 5, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8722 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Manpower & Training.

Date: June 12–13, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, Ph.D., MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, 301–594–1279, *meekert@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 5, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8720 Filed 4–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1247]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 10, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1247, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community Map Repository address
Fairfield County, Connecticut (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/FairfieldCTcoastal/*	
City of Bridgeport	City Hall Annex, 999 Broad Street, Bridgeport, CT 06604.
City of Norwalk	City Hall, 125 East Avenue, Norwalk, CT 06851.
City of Stamford	Government Center, 888 Washington Boulevard, Stamford, CT 06901.
Town of Darien	Town Hall, 2 Renshaw Road, Darien, CT 06820.
Town of Fairfield	John J. Sullivan Independence Hall, 725 Old Post Road, Fairfield, CT 06824.
Town of Greenwich	Town Hall, 101 Field Point Road, Greenwich, CT 06830.
Town of Stratford	Town Hall, 2725 Main Street, Stratford, CT 06615.
Town of Westport	Town Hall, 110 Myrtle Avenue, Westport, CT 06880.

Community	Community Map Repository address
New Haven County, Connecticut (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/NewHavenCTcoastal/*	
Borough of Woodmont	Woodmont Borough Hall, 31 Clinton Street, Milford, CT 06460.
City of Milford	City Hall, 110 River Street, Milford, CT 06460.
City of New Haven	City Hall, 165 Church Street, New Haven, CT 06510.
City of West Haven	City Hall, 355 Main Street, West Haven, CT 06516.
Town of Branford	Town Hall, 1019 Main Street, Branford, CT 06405.
Town of East Haven	Town Hall, 250 Main Street, East Haven, CT 06512.
Town of Guilford	Town Hall, 31 Park Street, Guilford, CT 06437.
Town of Hamden	Government Center, 2750 Dixwell Avenue, Hamden, CT 06518.
Town of Madison	Town Offices, 8 Campus Drive, Madison, CT 06443.
Town of North Haven	Town Hall, 18 Church Street, North Haven, CT 06473.
Bracken County, Kentucky, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/kentucky/bracken/*	
City of Augusta	City Offices, 219 Main Street, Augusta, KY 41002.
City of Brooksville	City Clerk's Office, 101 Frankfort Street, Brooksville, KY 41004.
City of Germantown	City Clerk's Office, 219 Main Street, Augusta, KY 41002.
Unincorporated Areas of Bracken County	Bracken County Courthouse, 116 West Miami Street, Brooksville, KY 41004.
Garrett County, Maryland, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.rampp-team.com/md.htm*	
Town of Accident	Town Hall, 104 South North Street, Accident, MD 21520.
Town of Deer Park	Town Hall, 100 Church Street, Deer Park, MD 21550.
Town of Friendsville	Town Hall, 313 Chestnut Street, Friendsville, MD 21531.
Town of Grantsville	Town Hall, 171 Hill Street, Grantsville, MD 21536.
Town of Kitzmiller	Town Hall, 104 West Centre Street, Kitzmiller, MD 21538.
Town of Loch Lynn Heights	Town Hall, 211 Bonnie Boulevard, Loch Lynn Heights, MD 21550.
Town of Mountain Lake Park	Town Hall, 1007 Allegany Drive, Mountain Lake Park, MD 21550.
Town of Oakland	Town Hall, 15 South 3rd Street, Oakland, MD 21550.
Unincorporated Areas of Garrett County	Garrett County Permits and Inspections Division, 2008 Maryland Highway, Suite 3, Mountain Lake Park, MD 21550.
Gregg County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.riskmap6.com*	
City of Clarksville City	City Hall, 631 U.S. Route 80 and White Street, Clarksville, TX 75693.
City of Easton	City Hall, 185 Kennedy Boulevard, Easton, TX 75663.
City of Gladewater	City Hall, 519 East Broadway, Gladewater, TX 75647.
City of Kilgore	City Hall, 815 North Kilgore Street, Kilgore, TX 75662.
City of Lakeport	Lakeport City Hall, 207 Milam Road, Longview, TX 75603.
City of Longview	Development Services and Engineering Department, 410 South High Street, Longview, TX 75601.
City of Warren City	Warren City Hall, 3004 George Richey Road, Gladewater, TX 75647.
Town of White Oak	Town Hall, 906 South White Oak Road, White Oak, TX 75693.
Unincorporated Areas of Gregg County	Gregg County Courthouse, 101 East Methvin, Longview, TX 75601.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 29, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–8600 Filed 4–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 2717 Maplewood Dr., Sulphur, LA 70663, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to

conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 22, 2011. The next triennial inspection date will be scheduled for July 2014.

FOR FURTHER INFORMATION CONTACT: Michael McCormick, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 15, 2012.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2012–8655 Filed 4–10–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–05]

Notice of Proposed Information Collection for Public Comment; Loan Guarantee for Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. Information collected determines if the Department will guarantee loans and mortgage insurance made by private lenders to Native American borrowers on ''Indian areas.''

DATES: *Comments due date:* June 11, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Guarantees for Indian Housing.

OMB Control Number: 2577–0200.

Description of the need for the information and proposed use: The information is required by section 184 of the Housing and Community Development Act of 1994, as amended by section 701 of the Native American Housing Assistance and Self-Determination Act of 1996 and implementing regulations at 24 CFR part 1005. HUD has the authority to guarantee loans for the construction, acquisition, rehabilitation or refinance of 1- to 4-family homes to be owned by Native Americans in restricted Indian lands or service areas. Mortgage lenders approved by HUD provide borrower and lender information to HUD for guarantee of the loan. If the information was not provided then HUD would be unable to guarantee loans and as a result lenders would be unable to provide financing to Native Americans.

Members of affected public: Businesses or Other For-profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 3000 annually with one response per respondents. The average number of responses is 58,100, for a total reporting burden of 20,805 hours.

Status of the proposed information collection: Revision of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 5, 2012.

Mary Schulhof,

Senior Program Analyst, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–8755 Filed 4–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–23]

Notice of Submission of Proposed Information Collection to OMB Consolidated Plan and Annual Performance Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department's collection of this information is in compliance with statutory provisions of the Cranston Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions to submit a Comprehensive Housing Affordability Strategy (Section 105(b)); the 1974 Housing and

Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(m)); and statutory provisions of these Acts that requires states and localities to submit applications and reports for these formula grant programs. The information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects and for informing citizens of intended uses of program funds.

DATES: *Comments Due Date:* May 11, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0117) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Consolidated Plan and Annual Performance Report.

OMB Approval Number: 2506–0117.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The Department's collection of this information is in compliance with statutory provisions of the Cranston Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions to submit a Comprehensive Housing Affordability Strategy (Section 105(b)); the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(m)); and statutory provisions of these Acts that requires states and localities to submit applications and reports for these formula grant programs. The information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects and for informing citizens of intended uses of program funds.

Estimation of the total number of hours to prepare the information collection including number of respondents, frequency of response and hours of response: The burden of meeting the regulatory requirements of Title I of the National Affordable Housing Act (NAHA) and the Housing and Community Development Act (HCDA) were assessed based on revisions to the previously approved information collection [OMB Control Number 2506–0117]. The paperwork estimates are as follows:

Task	Number of respondents	Frequency of response	Total U.S. burden hours
Consolidated Plan:			
Localities			
• Strategic Plan Development	1,000	1	154,000
• Action Plan Development	1,000	1	56,000
States			
• Strategic Plan Development	50	1	21,150
• Action Plan Development	50	1	9,350
Performance Report:			
Localities	1,000	1	81,000
States	50	1	6,300
* Abbreviated Strategy	100		8,200
Total	1,150		336,000

Status: Revision of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 5, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–8765 Filed 4–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–24]

Notice of Submission of Proposed Information Collection to OMB Single Family Mortgage Insurance on Hawaiian Homelands

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

FHA insures mortgages on single-family dwellings under provisions of the National Housing Act (12 U.S.C. 1709). The Housing and Urban Rural Recovery Act (HURRA), Public Law 98–

181, amended the National Housing Act to add Section 247 (12 U.S.C. 1715z–12) to permit FHA to insure mortgages for properties located on Hawaiian Homelands. Under this program, the mortgagor must be a native Hawaiian. Section 247 requires that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) will be a co-mortgagor; (b) guarantees or reimburses the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian homelands; or (c) offers other security acceptable to the Secretary. In accordance with 24 CFR 203.43i, the collection of information is verification that a loan applicant is a native Hawaiian and that the applicant holds a lease on land in a Hawaiian Homelands area. A borrower must obtain verification of eligibility from DHHL and submit it to the lender. A borrower cannot obtain a loan under these provisions without proof of status as a native Hawaiian. United States citizens living in Hawaii are not eligible for this leasehold program unless they are native Hawaiians. The eligibility document is required to obtain benefits.

In accordance with 24 CFR 203.439(c), lenders must report monthly to HUD and the DHHL on delinquent borrowers and provide documentation to HUD to support that the loss mitigation requirements of 24 CFR 203.604 have been met. To assist the DHHL in identifying delinquent loans, lenders report monthly. A delinquent mortgage that is reported timely would allow DHHL to intervene and prevent foreclosure. This collection of data is cited in 2502–0060.

DATES: *Comments Due Date:* May 11, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0358) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Approval Number: 2502–0358.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: FHA insures mortgages on single-family dwellings under provisions of the National Housing Act (12 U.S.C. 1709). The Housing and Urban Rural Recovery Act (HURRA), Public Law 98–181, amended the National Housing Act to add Section 247 (12 U.S.C. 1715z–12) to permit FHA to insure mortgages for properties located on Hawaiian Homelands. Under this program, the mortgagor must be a native Hawaiian. Section 247 requires that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) will be a co-mortgagor; (b) guarantees or reimburses the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian homelands; or (c) offers other security acceptable to the Secretary. In accordance with 24 CFR 203.43i, the collection of information is verification that a loan applicant is a native Hawaiian and that the applicant holds a lease on land in a Hawaiian Homelands area. A borrower must obtain verification of eligibility from DHHL and submit it to the lender. A borrower cannot obtain a loan under these provisions without proof of status as a native Hawaiian. United States citizens living in Hawaii are not eligible for this leasehold program unless they are native Hawaiians. The eligibility document is required to obtain benefits. In accordance with 24 CFR 203.439(c), lenders must report monthly to HUD and the DHHL on delinquent borrowers and provide documentation to HUD to support that the loss mitigation requirements of 24 CFR 203.604 have been met. To assist the DHHL in identifying delinquent loans, lenders report monthly. A delinquent mortgage that is reported timely would allow DHHL to intervene and prevent foreclosure. This collection of data is cited in 2502–0060.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 91. The number of respondents is 247, the number of responses is 494, the frequency of response is on occasion, and the burden hour per response is one hour and four minutes.

Status: This is an extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 5, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–8762 Filed 4–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–25]

Notice of Submission of Proposed Information Collection to OMB Public Housing Agency Plan

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. The PHA Plan informs HUD, residents, and the public of the PHA's mission for serving the needs of low, very low-income, and extremely low-income families and its strategy for addressing those needs. This

data allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs. The PHA Plan is being revised to address, clarify and provide additional guidance on the submission requirements for qualified and nonqualified PHAs, as well as to address previous public comments. Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act, of the Housing and Economic Recovery Act (HERA) of 2008 amends section 5A(b) of the 1937 Act by establishing ''qualified public housing agencies,'' a category of PHAs with less than 550 public housing units and tenant-based vouchers combined that are provided substantial paperwork relief, primarily with respect to the PHA Annual Plan requirements in section 5(A)(b) of the United States Housing Act of 1937. The paperwork relief exempts qualified PHAs from the requirement to prepare and submit an annual PHA plan to HUD for review. This Act impacts approximately seventy-four percent, or 2,994 of the 4,053 PHAs that are required to submit an annual PHA plan. In addition to the exemption from submitting annual plans for qualified agencies, because of the different annual plan submission requirements of agencies that are considered standard, high-performer, Housing Choice Voucher (HCV) only, small, and troubled within 24 CFR part 903, the existing approved forms were determined to be incompatible with the program requirements. Therefore, some previously approved forms have been separated into new forms that will be completed by different classes of PHAs. These changes also reflect recommendations made by the public in a previous information collection. Specifically, this information collection revises previously approved OMB forms HUD–50077–SL and HUD–50077–CR; adds Certifications of Compliance with PHA Plans and Related Regulations (form HUD–50077–SM–HP and HUD–50077–ST–HCV) formerly appearing on form HUD 50077 as separate documents; deletes approved OMB form HUD–50075, and replaces that form with five new forms (form HUD–50075–5Y, HUD–50075–ST, HUD–50075–SM–HP, HUD–50075–HCV, and HUD–50075–QA). Qualified PHAs no longer submit information on discretionary programs (demolition or disposition, HOPE VI, Project-based vouchers, required or voluntary conversion, homeownership, or capital improvements, etc.) as part of an Annual PHA Plan submission. However, Qualified PHAs that intend to implement these activities are still subject to the full application and approval processes that exist for demolition or disposition, designated housing, conversion, homeownership, and other special application processes that will no longer be tied to prior authorization in an Annual PHA Plan for a Qualified PHA. All PHAs, including the PHAs identified as Qualified PHAs under HERA, must continue to submit any demolition or disposition, public housing conversion, homeownership, or other special applications as applicable to HUD's Special Applications Center (SAC) in Chicago for review and approval or to HUD Headquarters for CFFP proposals.

It is expected that Qualified PHAs, as a matter of good business practice, continue to keep their residents, the general public, and the local HUD office apprised of any plans to initiate these types of programs and activities.

DATES: *Comments Due Date:* May 11, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0226) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Agency Plan.

OMB Approval Number: 2577–0226.

Form Numbers: 50075–SM–HP, HUD 50075–5Y, HUD–50077–CR, HUD–50077–ST–HCV, HUD–50077–CRT–SM–HP, HUD–50075–ST, HUD–50075–PHA HCV, HUD–50075.2, HUD–50075.1, HUD–50075–SM–HP, HUD 50077–SL, HUD–50075–QA.

Description of the Need for the Information and its Proposed Use: The PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. The PHA Plan informs HUD, residents, and the public of the PHA's mission for serving the needs of low, very low-income, and extremely low-income families and its strategy for addressing those needs. This data allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs. The PHA Plan is being revised to address, clarify and provide additional guidance on the submission requirements for qualified and nonqualified PHAs, as well as to address previous public comments. Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act, of the Housing and Economic Recovery Act (HERA) of 2008 amends section 5A(b) of the 1937 Act by establishing ''qualified public housing agencies,'' a category of PHAs with less than 550 public housing units and tenant-based vouchers combined that are provided substantial paperwork relief, primarily with respect to the PHA Annual Plan requirements in section 5(A)(b) of the United States Housing Act of 1937. The paperwork relief exempts qualified PHAs from the requirement to prepare and submit an annual PHA plan to HUD for review. This Act impacts approximately seventy-four percent, or 2,994 of the 4,053 PHAs that are required to submit an annual PHA plan. In addition to the exemption from submitting annual plans for qualified agencies, because of the different annual plan submission requirements of agencies that are considered standard, high-performer, Housing Choice Voucher (HCV) only, small, and troubled within 24 CFR part 903, the existing approved forms were determined to be incompatible with the program requirements. Therefore, some

previously approved forms have been separated into new forms that will be completed by different classes of PHAs. These changes also reflect recommendations made by the public in a previous information collection. Specifically, this information collection revises previously approved OMB forms HUD–50077–SL and HUD–50077–CR; adds Certifications of Compliance with PHA Plans and Related Regulations (form HUD–50077–SM–HP and HUD–50077–ST–HCV) formerly appearing on form HUD 50077 as separate documents; deletes approved OMB form HUD–50075, and replaces that form with five new forms (form HUD–50075–5Y, HUD–50075–ST, HUD–50075–SM–HP, HUD–50075–HCV, and HUD–50075–QA). Qualified PHAs no longer submit information on discretionary programs (demolition or disposition, HOPE VI, Project-based vouchers, required or voluntary conversion, homeownership, or capital improvements, etc.) as part of an Annual PHA Plan submission. However, Qualified PHAs that intend to implement these activities are still subject to the full application and approval processes that exist for demolition or disposition, designated housing, conversion, homeownership, and other special application processes that will no longer be tied to prior authorization in an Annual PHA Plan for a Qualified PHA. All PHAs, including the PHAs identified as Qualified PHAs under HERA, must continue to submit any demolition or disposition, public housing conversion, homeownership, or other special applications as applicable to HUD's Special Applications Center (SAC) in Chicago for review and approval or to HUD Headquarters for CFFP proposals.

It is expected that Qualified PHAs, as a matter of good business practice, continue to keep their residents, the general public, and the local HUD office apprised of any plans to initiate these types of programs and activities.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	4,053	1		5.006	20,290

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 5, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–8760 Filed 4–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2011–N253; FXRS12650800000S3–112–FF08R00000]

Hopper Mountain, Bitter Creek, and Blue Ridge National Wildlife Refuges, Ventura, Kern, San Luis Obispo, and Tulare Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments: draft comprehensive conservation plan/environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Hopper Mountain, Bitter Creek, and Blue Ridge National Wildlife Refuges for public review and comment. The CCP/EA, prepared under the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service proposes to manage the three refuges for the next 15 years. Draft compatibility determinations for several existing and proposed public uses are also available for review and public comment with the Draft CCP/EA.

DATES: To ensure consideration, we must receive your written comments by June 11, 2012.

ADDRESSES: Send your comments, requests for more information, or requests to be added to the mailing list by any of the following methods.

Email: fw8plancomments@fws.gov. Include ''Hopper CCP'' in the subject line of the message.

Fax: Attn: Sandy Osborn, (916) 414–6497.

U.S. Mail: Pacific Southwest Region, Refuge Planning, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846.

In-Person Drop-off: You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sandy Osborn, Planning Team Leader, at (916) 414–6503, or Michael Brady, Project Leader, at (805) 644–5185 or *fw8plancomments@fws.gov*. Further information may also be found at *http://www.fws.gov/hoppermountain/*.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires the Service to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation.

We initiated the CCP/EA for the Hopper Mountain, Bitter Creek, and Blue Ridge National Wildlife Refuges in April 2010. At that time and throughout the process, we requested, considered, and incorporated public scoping comments in numerous ways. Our public outreach included a **Federal Register** notice of intent published on April 6, 2010 (75 FR 17430), two planning updates, a CCP Web page (*http://www.fws.gov/hoppermountain/*), and three public scoping meetings. The scoping comment period ended on May 21, 2010. Verbal comments were recorded at the public meetings, and written comments were received via letters, emails, completed issues workbooks, comment cards, meeting evaluations, and a petition letter with 276 signatures.

Background

Hopper Mountain NWR was established in 1974 and includes 2,471 contiguous acres in Ventura County, California. Bitter Creek NWR was established in 1985 and includes 14,097 acres, primarily in Kern County and extending into San Luis Obispo and Ventura Counties. Blue Ridge NWR was established in 1982 and includes 897

acres in Tulare County in the foothills of the Sierra Nevada Mountains. These three refuges in the Hopper Mountain NWR Complex (Complex) in southern California were created under the authority of the Federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), primarily to restore the endangered California condor population to its native range. Due to the sensitivity of the California condor recovery activities, the Refuges are currently closed to the public except for Service-led tours and volunteer activities. Through this CCP process, we will determine whether any areas of the refuges can be made available to the public for wildlife-dependent recreational opportunities.

Alternatives

The Draft CCP/EA identifies and evaluates three alternatives for managing Hopper Mountain, Bitter Creek, and Blue Ridge National Wildlife Refuges for the next 15 years. The alternative that appears to best meet the Refuges' purposes is identified as the preferred alternative. The preferred alternative is identified based on the analysis presented in the Draft CCP/EA, which may be modified following the completion of the public comment period based on comments received from other agencies, Tribal governments, nongovernmental organizations, or individuals.

Under Alternative A (no action alternative) for each of the three refuges, the Service would continue to manage the Refuges as we have in the recent past. There would be continued maintenance of facilities and support of the California Condor Recovery Program (Recovery Program) activities. The three Refuges would remain closed to the public.

Alternatives for Hopper Mountain NWR

Under Alternative B (preferred alternative), the Service would increase condor management and support actions; collect baseline data for Refuge resources with emphasis on special status species; improve management of all habitat types on the Refuge; and increase outreach, and Service-guided visitor and volunteer opportunities. The Refuge would remain closed to the public.

Under Alternative C for Hopper Mountain NWR, the Service would increase some condor management and support actions, expand baseline data collection, manage invasive plants without using pesticides, increase habitat protection and enhancement of select black walnut and oak woodlands, increase some visitor services, and consider the feasibility of providing wildlife-dependent recreation on the Refuge. The Refuge would remain closed to the public.

Alternatives for Bitter Creek NWR

Under Alternative B (preferred alternative), the Service would increase condor management and support actions, install a 1,000-square-foot condor treatment facility, and collect baseline data on Refuge resources with emphasis on special status species. The Service would also use grazing and other methods to improve habitat quality to support special status San Joaquin Valley wildlife, and restore some springs and drainages. We would also expand visitor services by opening a new interpretive trail, and developing a new Refuge administrative office, visitor station, and condor observation point.

Under Alternative C for Bitter Creek NWR the Service would improve and expand current management by increasing some condor management and support actions; restoring more habitat to support special status species; managing invasive plants without using pesticides; restoring more springs and drainages; and expanding outreach, interpretation, and visitor and volunteer opportunities.

Alternatives for Blue Ridge NWR

Under Alternative B (preferred alternative) the Service would improve current management by increasing condor management activities, collecting baseline data for special status species, and adding volunteer opportunities. Portions of the Refuge would be opened to the public.

Under Alternative C for Blue Ridge NWR the Service would increase some condor management actions, but to a lesser extent than Alternative B, and work with partners to increase some guided visitor and volunteer opportunities. The Refuge would remain closed to the public.

Public Meetings

The locations, dates, and times of public meetings will be listed in a planning update distributed to the project mailing list and posted on the refuge planning Web site at *http://www.fws.gov/hoppermountain/.*

Review and Comment

Copies of the Draft CCP/EA may be obtained by writing to Sandy Osborn (see **ADDRESSES**). Copies of the Draft CCP/EA may be viewed at the same address and local libraries. The Draft CCP/EA will also be available for viewing and downloading online at: *http://www.fws.gov/hoppermountain/.*

Comments on the Draft CCP/EA should be addressed to Sandy Osborn (see **ADDRESSES**).

At the end of the review and comment period for this Draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP/EA. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2012–8659 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–0087; 96300–1671–0000 FY12–R4]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Sixteenth Regular Meeting: Taxa Being Considered for Amendments to the CITES Appendices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The sixteenth regular meeting of the Conference of the Parties to CITES (CoP16) is tentatively scheduled to be held in Thailand, March 3–15, 2013. With this notice, we describe proposed amendments to the CITES Appendices (species proposals) that the United States might submit for consideration at CoP16 and invite your comments and information on these proposals.

DATES: We will consider written information and comments we receive by June 11, 2012.

ADDRESSES: You may submit comments pertaining to species proposals for

consideration at CoP16 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments on Docket No. FWS–R9–IA–2011–0087.

U.S. mail or hand-delivery: Public Comments Processing, *Attn:* FWS–R9–IA–2011–0087; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not consider comments sent by email or fax or to an address not listed in the **ADDRESSES** section. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive in response to this notice will be available for public inspection on *http://www.regulations.gov,* or by appointment between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 North Fairfax Drive, Room 110, Arlington, VA 22203, phone 703–358–1708.

FOR FURTHER INFORMATION CONTACT: Rosemarie Gnam Ph.D., Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 110, Arlington, VA 22203; phone 703–358–1708, fax 703–358–2276, email: *scientificauthority@fws.gov*. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction, and are affected by trade. These species are included in Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/app/2011/E-Dec22.pdf*. Currently, 175 countries, including the United States, are Parties to CITES. The Convention calls for meetings of the Conference of the Parties, held every 2 to 3 years, at which the Parties review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the lists of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, as well as resolutions, decisions, and agenda items for consideration by all the Parties.

This is our third in a series of **Federal Register** notices that, together with an announced public meeting, provide you with an opportunity to participate in the development of the U.S. negotiating positions for the sixteenth regular meeting of the Conference of the Parties to CITES (CoP16), tentatively scheduled to be held in Thailand, March 3–15, 2013. We published our first CoP16-related **Federal Register** notice on June 14, 2011 (76 FR 34746), in which we requested information and recommendations on animal and plant species proposals for the United States to consider submitting for consideration at CoP16. You may obtain information on that **Federal Register** notice from the Division of Scientific Authority at the address provided in **FOR FURTHER INFORMATION CONTACT** section above. We published our second CoP16-related **Federal Register** notice on November 7, 2011 (76 FR 68778), in which we requested information and recommendations on resolutions, decisions, and agenda items that the United States might consider submitting for discussion at CoP16, and provided preliminary information on how to request approved observer status for nongovernmental organizations that wish to attend the meeting. Comments received on that notice may be viewed at *http://www.regulations.gov* at Docket No. FWS–R9–IA–2011–0087. You may obtain information on that **Federal Register** notice by contacting Robert R. Gabel, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; phone 703–358–2095; fax 703–358–2298. Our regulations governing this public process are found in title 50 of the Code of Federal Regulations (CFR) at § 23.87.

Recommendations for Species Proposals for the United States To Consider Submitting for CoP16

In our **Federal Register** notice of June 14, 2011 (76 FR 34746), we requested information and recommendations on potential species proposals for the United States to consider submitting for consideration at CoP16. We received recommendations from the following organizations for possible proposals involving 92 taxa (3 families, 13 genera, and 76 individual species) and 2 general groups (Asian freshwater turtles and tortoises and native Hawaiian sandalwood species): the American Herbal Products Association; Animal Welfare Institute; Bush Warriors; Center for Biological Diversity; International Fund for Animal Welfare; International Union for Conservation of Nature (IUCN) Tortoise and Freshwater Turtle Specialist Group; Oceana; Pew Environment Group; Shark Advocates International; Species Survival Network; United Plant Savers; Wild Equity Institute; Wildlife Conservation Society; and World Wildlife Fund. In addition, we received comments from individuals as follows: 49 on the white rhinoceros; 25,742 on North American turtles; and 2,879 on bluefin tuna.

We have undertaken initial assessments of the available trade and biological information on all of these taxa. Based on these assessments, we made provisional evaluations of whether to proceed with the development of proposals for species to be included in, removed from, or transferred between the CITES Appendices. We made these evaluations by considering the biological and trade information available on the species; the presence, absence, and effectiveness of other mechanisms that may preclude the need for species' inclusion in the CITES Appendices (e.g., range country actions or other international agreements); and availability of resources. Furthermore, our assignment of a taxon to one of these categories, which reflects the likelihood of our submitting a proposal, included consideration of the following factors, which reflect the U.S. approach for CoP16 discussed in our June 14, 2011, **Federal Register** notice:

(1) Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for species in trade?

(2) Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?

(3) Does the proposed action provide additional conservation benefit for a

species already covered by another international agreement?

In sections A, B, and C below, we have listed the current status of each species proposal recommended by the public, as well as species proposals we have been developing on our own. Please note that we have only provided here a list of taxa and the proposed action. We have posted an extended version of this notice on our Web site at *http://www.fws.gov/international/newspubs/fedregnot.html,* with text describing in more detail each proposed action and explaining the rationale for the tentative U.S. position on each possible proposal. Copies of the extended version of the notice are also available from the Division of Scientific Authority at the above address.

We welcome your comments, especially if you are able to provide any additional biological or trade information on these species. For each species, more detailed information is on file in the Division of Scientific Authority.

A. What species proposals is the United States likely to submit for consideration at CoP16?

The United States is likely to develop and submit proposal(s) for the following taxa.

Plants

1. Laguna Beach dudleya (*Dudleya stolonifera*) and Santa Barbara dudleya (*D. traskiae*)—Removal from Appendix II.

2. American ginseng (*Panax quinquefolius*)—Amendment of the Appendix II annotation.

B. On what species proposals is the United States still undecided, pending additional information and consultations?

The United States is still undecided on whether to submit proposals for CoP16 for the following taxa. In some cases, we have not completed our consultations with relevant range countries. In other cases, we expect meetings to occur in the immediate future, at which participants will generate important recommendations, trade analyses, or biological information on the taxon in question.

Plants

1. Hawaiian sandalwoods (*Santalum* spp.)—Inclusion in Appendix II.

Corals

2. Red and pink corals (*Corallium* spp. and *Paracorallium* spp.)—Inclusion in Appendix II.

Fishes

3. Longfin mako shark (*Isurus paucus*)—Inclusion in Appendix II.

4. Shortfin mako shark (*Isurus oxyrinchus*)—Inclusion in Appendix II.

5. Porbeagle shark (*Lamna nasus*)—Inclusion in Appendix II or Appendix I.

6. Scalloped hammerhead shark (*Sphyrna lewini*), great hammerhead shark (*S. mokarran*), and smooth hammerhead shark (*S. zygaena*)—Inclusion in Appendix II.

7. Oceanic whitetip shark (*Carcharhinus longimanus*)—Inclusion in Appendix II or Appendix I.

8. Bigeye thresher shark (*Alopias superciliosus*), common thresher shark (*A. vulpinus*), and pelagic thresher shark (*A. pelagicus*)—Inclusion in Appendix II.

9. Orange roughy (*Hoplostethus atlanticus*)—Inclusion in Appendix II.

10. American eel (*Anguilla rostrata*) and all other *Anguilla* species not previously included in the CITES Appendices—Inclusion in Appendix II.

Reptiles

11. Tokay gecko (*Gekko gecko*)—Inclusion in Appendix II.

12. Burmese starred tortoise (*Geochelone platynota*)—Transfer from Appendix II to Appendix I.

13. Crowned river turtle (*Hardella thurjii*)—Inclusion in Appendix II.

14. Burmese peacock softshell turtle (*Nilssonia formosa*)—Inclusion in Appendix II.

15. Roti Island snake-necked turtle (*Chelodina mccordi*)—Transfer from Appendix II to Appendix I.

16. Yellow-margined box turtle (*Cuora flavomarginata*)—Transfer from Appendix II to Appendix I.

17. McCord's box turtle (*Cuora mccordi*)—Transfer from Appendix II to Appendix I.

18. Chinese three-striped box turtle (*Cuora trifasciata*)—Transfer from Appendix II to Appendix I.

19. Big-headed turtle (*Platysternon megacephalum*)—Transfer from Appendix II to Appendix I.

20. Painted terrapin (*Batagur borneoensis*)—Transfer from Appendix II to Appendix I.

21. Burmese roofed turtle (*Batagur trivittata*)—Transfer from Appendix II to Appendix I.

22. Map turtles (*Graptemys* spp.)—Inclusion in Appendix II and three species in Appendix I.

23. Blanding's turtle (*Emydoidea blandingii*)—Inclusion in Appendix I or Appendix II.

24. Spotted turtle (*Clemmys guttata*)—Inclusion in Appendix I or Appendix II.

25. Alligator snapping turtle (*Macrochelys temminckii*)—Inclusion in Appendix II.

26. Diamondback terrapin (*Malaclemys terrapin*)—Inclusion in Appendix II.

Birds

27. Gyrfalcon (*Falco rusticolus*)—Transfer from Appendix I to Appendix II.

Mammals

28. Walrus (*Odobenus rosmarus*)—Inclusion in Appendix II or Appendix I.

29. Polar bear (*Ursus maritimus*)—Transfer from Appendix II to Appendix I.

C. What species proposals is the United States not likely to submit for consideration at CoP16, unless we receive significant additional information?

The United States does not intend to submit proposals for the following taxa unless we receive significant additional information indicating that a proposal is warranted. Information currently available for each of the taxa listed below does not support a defensible proposal.

Plants

1. Goldenseal (*Hydrastis canadensis*)—Removal from Appendix II.

Mollusks

2. Nautilids (*Allonautilus* spp. and *Nautilus* spp.)—Inclusion in Appendix II.

Spiders

3. Burrowing (*Chilobrachys fimbriatus* and *C. hardwicki*), large burrowing (*Haploclastus kayi, Thrigmopoeus insignis,* and *T. truculentus*), and parachute (*Poecilotheria formosa, P. hanumavilasumica, P. metallica, P. miranda, P. nallamalaiensis, P. regalis, P. rufilata, P. striata,* and *P. tigrinawesseli*) spiders—Inclusion in Appendix II.

Fishes

4. Gulper sharks (Centrophoridae)—Inclusion in Appendix II.

5. Devil and manta rays (Mobulidae)—Inclusion in Appendix II or in Appendix I.

6. Hammerhead sharks (Sphyrnidae) (see section B.6. above for consideration of scalloped, great, and smooth hammerhead sharks)—Inclusion in Appendix I or, if not warranted, in Appendix II.

7. Dusky shark (*Carcharhinus obscurus*)—Inclusion in Appendix II or Appendix I.

8. Sandbar shark (*Carcharhinus plumbeus*)—Appendix II or Appendix I.

9. Portuguese shark (*Centroscymnus coelolepis*)—Inclusion in Appendix II.
10. Spiny dogfish (*Squalus acanthias*)—Inclusion in Appendix II.
11. Roundnose grenadier (*Coryphaenoides rupestris*)—Inclusion in Appendix II.
12. Roughhead grenadier (*Macrourus berglax*)—Inclusion in Appendix II.
13. North Atlantic bluefin tuna (*Thunnus thynnus*)—Inclusion in Appendix I.

Reptiles

14. San Francisco garter snake (*Thamnophis sirtalis tetrataenia*)—Inclusion in Appendix I.
15. Bocourt's water snake (*Enhydris boucourti*) and puff-faced water snake (*Homalopsis buccata*)—Inclusion in Appendix III.
16. Other turtles not native to the United States (Inclusion in Appendix II or Appendix I or Transfer from Appendix II to Appendix I):
- Malayan softshell turtle (*Dogania subplana*),
- Indian star tortoise (*Geochelone elegans*),
- Ryukyu black-breasted leaf turtle (*Geoemyda japonica*),
- black-breasted hill turtle (*Geoemyda spengleri*),
- Sulawesi forest turtle (*Leucocephalon yuwonoi*),
- Burmese mountain tortoise (*Manouria emys*),
- impressed tortoise (*Manouria impressa*),
- Indian black turtle (*Melanochelys trijuga*),
- Indian eyed turtle (*Morenia petersi*),
- Leith's softshell turtle (*Nilssonia (Aspideretes) leithii*),
- Malaysian giant turtle (*Orlitia borneensis*),
- wattle-necked softshell turtle (*Palea steindachneri*),
- Cochin forest cane turtle (*Vijayachelys silvatica*),
- Cann's snake-necked turtle (*Chelodina canni*),
- Gunalen's snake-necked turtle (*Chelodina gunaleni*),
- eastern or common snake-necked turtle (*Chelodinal ongicollis*),
- New Guinea snake-necked turtle (*Chelodina novaeguineae*),
- narrow-breasted snake-necked turtle (*Chelodina oblonga*),
- Pritchard's snake-necked turtle (*Chelodina pritchardi*),
- Reimann's snake-necked turtle (*Chelodina reimanni*),
- Steindachner's snake-necked turtle (*Chelodina steindachneri*),
- yellow-headed box turtle (*Cuora aurocapitata*),
- Bourret's box turtle (*Cuora bourreti*),
- Ryukyu yellow-margined box turtle (*Cuora evelynae*),
- McCord's box turtle (*Cuora mccordi*),
- keeled box turtle (*Cuora mouhotii*),
- Pan's box turtle (*Cuora pani*),
- Southern Vietnamese box turtle (*Cuora picturata*),
- Yunnan box turtle (*Cuora yunnanensis*),
- Zhou's box turtle (*Cuora zhoui*),
- western black-bridged leaf turtle (*Cyclemys atripons*),
- Asian leaf turtle (*Cyclemys dentate*),
- enigmatic leaf turtle (*Cyclemys enigmatica*),
- Myanmar brown leaf turtle (*Cyclemys fusca*),
- Assam leaf turtle (*Cyclemys gemeli*),
- Southeast Asian leaf turtle (*Cyclemys oldhamii*),
- eastern black-bridged leaf turtle (*Cyclemys pulchristriata*),
- white-throated or southern snapping turtle (Elseya albagula),
- Southern New Guinea snapping turtle (*Elseya branderhorsti*),
- northern snapping turtle (*Elseya dentata*),
- Irwin's snapping turtle (*Elseya irwini*),
- Gulf or Riversleigh snapping turtle (*Elseya lavarackorum*),
- Bell's or western sawshelled turtle (*Myuchelys bellii*),
- Bellinger River sawshelled turtle (*Myuchelys georgesi*),
- common sawshelled turtle (*Myuchelys latisternum*),
- New Guinea snapping turtle (*Myuchelys novaeguineae*),
- Manning River sawshelled turtle (*Myuchelys purvisi*),
- Beal's eyed turtle (*Sacalia bealei*),
- Chinese false eyed turtle (*Sacalia psuedocellata*),
- four-eyed turtle (*Sacalia quadriocellata*),
- striped New Guinea softshell turtle (*Pelochelys bibroni*),
- Cantor's or Asian giant softshell turtle (*Pelochelys cantorii*),
- Northern New Guinea softshell turtle (*Pelochelys signifera*),
- red-crowned roofed turtle (*Batagur kachuga*),
- yellow-headed temple turtle (*Heosemys annandalii*),
- Arakan forest turtle (*Heosemys depressa*),
- Annam pond turtle (*Mauremys annamensis*),
- yellow pond turtle (*Mauremys mutica*),
- red-necked pond turtle (*Mauremys nigricans*),
- Philippine forest turtle (*Siebenrockiella leytensis*),
- Asian narrow-headed softshell turtle (*Chitra chitra*),
- Burmese narrow-headed softshell turtle (*Chitra vandijki*),
- Swinhoe's giant softshell turtle (*Rafetus swinhoei*),
- Central American River turtle (*Dermatemys mawii*),
- giant musk turtles (*Staurotypus* spp.),
- Dahl's toad-headed turtle (*Mesoclemmys dahli*),
- Hoge's side-necked turtle (*Mesoclemmys hogei*),
- Madagascar big-headed turtle (*Erymnochelys madagascariensis*),
- giant South American river turtle (*Podocnemis expansa*), and
- Magdalena river turtle (*Podocnemis lewyana*).

17. Flattened musk turtle (*Sternotherus depressus*)—Inclusion in Appendix I.
18. Softshell turtles (*Apalone* spp.)—Inclusion in Appendix II.
19. Common snapping turtle (*Chelydra serpentina*)—Inclusion in Appendix III.

Mammals

20. White rhinoceros (*Ceratotherium simum*)—Inclusion of the entire species in Appendix I.
21. Narwhal (*Monodon monoceros*)—Transfer from Appendix II to Appendix I.
22. Indian or thick-tailed pangolin (*Manis crassicaudata*), Philippine pangolin (*M. culionensis*), Sunda or Malayan pangolin (*M. javanica*), and Chinese pangolin (*M. pentadactyla*)—Transfer from Appendix II to Appendix I.

Future Actions

As stated above, the next regular meeting of the Conference of the Parties (CoP16) is tentatively scheduled to be held in Thailand, March 3–15, 2013. The United States must submit any proposals to amend Appendix I or II, or any draft resolutions, decisions, or agenda items for discussion at CoP16 to the CITES Secretariat 150 days (tentatively early October 2012) prior to the start of the meeting. In order to meet this deadline and to prepare for CoP16, we have developed a tentative U.S. schedule. Approximately 9 months prior to CoP16, we plan to publish a **Federal Register** notice announcing draft resolutions, draft decisions, and agenda items to be submitted by the United States at CoP16, and to solicit further information and comments on them. We will consider all available information and comments, including those received in writing during that comment period, as we decide which

proposed resolutions, decisions, and agenda items warrant submission by the United States for consideration by the Parties. Approximately 4 months prior to CoP16, we will post on our Web site an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP16.

Through a series of additional notices and Web site postings in advance of CoP16, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP16. We will also publish an announcement of a public meeting to be held approximately 3 months prior to CoP16; that meeting will enable us to receive public input on our positions regarding CoP16 issues. The procedures for developing U.S. documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted in paragraph (c) of that section, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and of U.S. negotiating positions.

Author

The primary author of this notice is Mary Cogliano, Ph.D., Division of Scientific Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2012.

Daniel M. Ashe,

Director.

[FR Doc. 2012–8665 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14839–A, F–14839–A2; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Kongnikilnomuit Yuita Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Kongnikilnomuit Yuita Corporation. The lands are in the vicinity of Bill Moore's Slough, Alaska, and are located in:

Seward Meridian, Alaska

T. 33 N, R. 74 W.,
Sec. 3.
Containing 530.14 acres.
T. 33 N., R. 75 W.,
Sec. 5.
Containing 40 acres.
T. 32 N., R. 76 W.,
Sec. 10.
Containing 40 acres.
Aggregating 610.14 acres.

Notice of the decision will also be published four times in the *Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 11, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM.

The BLM will reply during normal business hours.

Jennifer Noe,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–8609 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9349; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Calista Corporation. The decision will approve conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The lands are located north of Mountain Village, Alaska, and contain 3.11 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 11, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by

email at *ak.blm.conveyance@blm.gov*. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2012–8613 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L51100000–GA0000–LVEMC09CC005, COC–70615]

Notice of Competitive Coal Lease Sale, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal reserves in the Elk Creek East Tract described below in Gunnison County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m., May 15, 2012. The sealed bid must be submitted on or before 10 a.m., May 15, 2012.

ADDRESSES: The lease sale will be held in the Second Floor Conference Room of the Bureau of Land Management (BLM) Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Sealed bids must be submitted to the Cashier, BLM Colorado State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Kurt Barton, Land Law Examiner, at 303–239–3714, or *kbarton@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Oxbow Mining, LLC. The Federal coal reserves to be offered consist of all D seam reserves recoverable by underground mining methods in the following described lands located in Gunnison County, Colorado:

Sixth Principal Meridian

T. 13 S. R. 90 W.,
Sec. 3, lots 8, 9, and 16;
Sec. 4, lots 5 to 16, inclusive;
Sec. 5, lots 12, 13, 20, and 24.
Containing approximately 725.90 acres, more or less.

The tract contains an estimated 3.96 million tons of recoverable coal reserves. The underground minable coal is ranked as bituminous B coal. The estimated coal quality on an as-received basis for the seam is as follows:

D SEAM:

British Thermal Unit (BTU).	12,005 BTU/lb.
Volatile Matter	34.72%
Moisture	7.47
Fixed Carbon	45.87
Sulfur Content	0.67
Ash Content	11.27

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

The sealed bids should be sent by certified mail, return-receipt requested, or be hand delivered to the Cashier, BLM Colorado State Office, at the address given above and clearly marked ''Sealed Bid for COC–70615 Coal Sale—Not to be opened before 10 a.m., May 15, 2012.'' The cashier will issue a receipt for each hand-delivered bid. Bids received after 10 a.m., May 15, 2012, will not be considered. If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed-bids must be submitted within 15 minutes following the sale official's announcement at the sale that identical high bids have been received.

Prior to lease issuance, the high bidder, if other than the applicant, must pay to the BLM the cost recovery fees in the amount of $10,347.10 in addition to all processing costs the BLM incurs after the date of this sale notice (43 CFR 3473.2).

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods.

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale and available from the BLM Colorado State Office at the address above. Case file documents, COC–70615, are available for inspection at the BLM Colorado State Office Public Room.

Steven Hall,

Acting State Director.

[FR Doc. 2012–8686 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY93000 L16100000.DU0000]

Notice of Intent To Amend the Resource Management Plan for the Rawlins Field Office and Associated Environmental Assessment, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Rawlins Field Office (RFO), Rawlins, Wyoming, intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for the RFO and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP amendment with associated EA. Comments on issues may be submitted in writing until May 11, 2012. The dates and locations of any scoping meetings will be announced at least 15 days in advance through the local news media, newspapers, and the BLM Web site at: *http://www.blm.gov/wy/st/en/programs/Planning/rmps/rawlins.html*. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation, as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Rawlins RMP Visual Resource

Management Amendment and Areas of Critical Environmental Concern Documentation/EA by any of the following methods:

- *Web site: http://www.blm.gov/wy/st/en/programs/Planning/rmps/rawlins.html.*
- *Email: BLM_WY_RL_RMP_VRM@blm.gov.* Please reference ''Rawlins VRM Review'' in the subject line.
- *Fax:* 307–328–4224
- *Mail:* Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301–2407.

All comments must include a legible full name and address on the envelope, letter, fax, postcard, or email.

Documents pertinent to this proposal may be examined at the Rawlins Field Office, 1300 North Third Street, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: Or to have your name added to our mailing list, contact John Spehar, Rawlins Field Office Plan Amendment Team Leader, telephone 307–328–4200; address, Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301–2407; email, *jspehar@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM RFO, Rawlins, Wyoming, intends to prepare an RMP amendment with an associated EA for the RFO, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Albany, Carbon, Laramie and eastern Sweetwater counties, Wyoming, and encompasses approximately 3.5 million acres of BLM-administered public land and 4.5 million acres of Federal sub-surface mineral estate.

The BLM completed the Rawlins RMP revision in December 2008. However, the BLM's resolution of two protest issues—one regarding visual resource management (VRM) and the other regarding Areas of Critical Environmental Concern (ACECs)—required the RFO to conduct additional planning. In response to the first issue, the RFO has updated the visual resources inventory within the planning area. The BLM will use this updated inventory as a baseline to consider, analyze, and designate VRM classes for BLM-administered lands in the planning area.

This review will not include the decision area for the Chokecherry/Sierra Madre wind energy project, however, as a VRM amendment to the Rawlins RMP is being separately considered in the NEPA process associated with that project's review. Second, the BLM received nominations for ACECs from the public that were not reviewed or considered during the RMP revision process. The BLM will use this planning process to review and consider these nominations for potential designation as ACECs.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Energy development; special designations; resource accessibility; public land-urban interface; special status species; water quality; vegetation management; recreation, cultural resource, and paleontological resource management.

Preliminary planning criteria include:

- The RMP amendment will focus only on VRM class designations and review of previously submitted ACEC nominations;
- The RMP amendment will comply with NEPA, FLPMA, and other applicable laws, executive orders, regulations and policy;
- The RMP amendment will recognize valid existing rights;
- Lands covered in the EA for the plan amendment include any/all lands that may affect, or be affected by, the management occurring on the BLM-administered public lands in the RFO. However, planning decisions in the RMP and the VRM-targeted amendment will apply only to the BLM-administered public lands and Federal mineral estate in the planning area; and
- A collaborative and multi-jurisdictional approach will be used, where possible, to jointly determine the desired future condition and management direction for the public lands. To the extent possible and within legal and regulatory parameters, the BLM management and planning decisions will complement the planning and management decisions of other agencies, State and local governments, and Native American tribes, with jurisdictions intermingled with, and adjacent to, the planning area.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 30 days of the last public meeting, whichever is later.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP Amendment/EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan amendment. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional and national needs and concerns.

The BLM will use an interdisciplinary approach during the plan amendment process in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Air quality, cultural resources, fire and fuels management, forest management, lands and realty, rangeland management, minerals and geology, outdoor recreation, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics, and wild horses.

Authority: 40 CFR 1501.7, 43 CFR 1610.2

Larry Claypool,

Acting State Director, Wyoming.

[FR Doc. 2012–8683 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, T. 17 N., R. 1 W., of the Boise Meridian, Idaho, Group Number 1333, was accepted January 11, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 15, and a metes-and-bounds survey in section 15, T. 1 S., R. 20 E., Boise Meridian, Idaho, Group Number 1347, was accepted February 3, 2012.

The plat representing the dependent resurvey of portions of the subdivisional lines and meander lines of the Salmon River, and the subdivision of sections 11 and 14, T. 14 N., R. 19 E., Boise Meridian, Idaho, Group Number 1318 was accepted February 8, 2012.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the survey of the 2010 meanders of a portion of Round Valley Island in section 2, T. 13 N., R. 19 E., of the Boise Meridian, Idaho, Group Number 1331, was accepted February 9, 2012.

The plat constituting the entire survey record of the dependent resurvey of portions of the north and east boundaries and subdivisional lines, and the subdivision of sections 12 and 13, T. 8 N., R. 38 E., Boise Meridian, Idaho, Group Number 1335, was accepted February 17, 2012.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of section 25, T. 4 N., R. 40 E., of the Boise Meridian, Idaho, Group Number 1334, was accepted February 22, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 8, 9, and 17, and the metes-and-bounds survey of lots 1 through 13, in section 8,T. 3 N., R. 18 E., of the Boise Meridian, Idaho, Group Number 1310, was accepted March 21, 2012.

This survey was executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the 7th Standard Parallel North (south boundary) and subdivisional lines, and the subdivision of sections 27, 34, and 35, T. 36 N., R. 1 E., of the Boise Meridian, Idaho, Group Number 1315, was accepted March 7, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 10 and 17, T. 45 N., R. 5 W., of the Boise Meridian, Idaho, Group Number 1321, was accepted March 21, 2012.

This survey was executed at the request of the U.S.D.A. Forest Service to meet their administrative needs. The lands surveyed are:

The plat constituting the dependent resurvey of a portion of the south boundary and the survey of a portion of the subdivisional lines, T. 8 N., R. 13 East, of the Boise Meridian, Idaho, Group Number 1326, was accepted August 31, 2011.

Dated: April 3, 2012.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2012–8657 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON03400 L17110000.AL0000]

Notice of Intent To Collect Fees on Public Land in Mesa County, CO (Ruby-Horsethief Stretch of the Colorado River) Under the Federal Lands Recreation Enhancement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), the Bureau of Land Management's (BLM) Grand Junction Field Office is proposing to begin collecting fees for overnight camping on the Ruby-Horsethief stretch of the Colorado River, between Loma, Colorado, and the Colorado State Line, Mesa County, Colorado. The Ruby-Horsethief stretch of the Colorado River was designated as a Special Area by the BLM in the Ruby Canyon/Black Ridge Integrated Resource Management Plan (March 1998).

DATES: The BLM's Grand Junction Field Office and McInnis Canyons NCA will initiate fee collection in the Ruby-Horsethief Special Area starting May 1, 2013, unless the BLM publishes a **Federal Register** notice to the contrary.

ADDRESSES: Copies of the fee proposal are available at the Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506; phone: 970–244–3000; and online at: *http://www.blm.gov/co/st/en/nca/mcnca/what_s_news_.html.*

FOR FURTHER INFORMATION CONTACT: Katie A. Stevens, National Conservation Area Manager, at the address above, or via email at *kasteven@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Ruby-Horsethief Special Area offers outstanding opportunities for overnight, flat-water boating in the Ruby and Horsethief River Canyons. The special area also provides access to high-quality, outdoor recreation opportunities (primarily wilderness hiking and camping) in the Black Ridge Canyons Wilderness and the McInnis Canyons National Conservation Area (MCNCA). Maintaining a naturally appearing recreation setting, a quality social setting, and managing the area for overnight camping while protecting natural resources requires substantial Federal investment. The BLM is committed to finding the proper balance between public use and the protection of resources. The BLM may collect fees in conjunction with a Special Recreation Permit (SRP) as required to manage visitor use, protect natural and cultural resources, achieve the goals and objectives of the MCNCA land use plan, and authorize specific types of recreational activities. The special area qualifies as a site wherein visitors can be charged a fee in conjunction with an SRP, authorized under Section 803(h) of the REA, 16 U.S.C. 6802(h). In accordance with the REA and implementing regulations at 43 CFR

2930, visitors would obtain an individual SRP to camp within the Ruby-Horsethief Special Area. This SRP would be required to be displayed at each campsite. Permits would expire at the beginning of the subsequent calendar day.

Suggested fees for campsite usage would be based on group size: $20 for a small group (1–5), $50 for a medium group (6–14) and $100 for a large group (15–25). The BLM's goal for the Ruby-Horsethief fee program is to provide a quality recreational experience and maintain the area in a naturally appearing condition consistent with the recreation setting established by the RMP; manage visitor use under existing rules and regulations by providing for increased law enforcement presence; develop additional services, such as expanding interpretive/educational programming; and protect resources. All fees collected would be used for expenses within the river corridor.

In November and December 2011, the BLM completed and made available two documents to provide information to the public: The Ruby-Horsethief Business Plan (posted in November 2011) and the Ruby-Horsethief Environmental Assessment (EA) Decision Record and Finding of No Significant Impact (signed December 21, 2011). The Business Plan outlines operational goals of the area and the purpose of the fee program. The EA, Decision Record and Finding of No Significant Impact conclude three full years of public involvement and outreach related to the fee and permit. Both the Business Plan and the EA provide management direction for public enjoyment of these public lands through the recreational experience of overnight camping while minimizing the potential for resource damage from authorized uses. The Business Plan also provides a market analysis of local recreation sites and sets the basis for the fee proposal. Both documents are available online at: *http://www.blm.gov/co/st/en/nca/mcnca/what_s_news_.html.*

The Business Plan addresses recreation opportunities, the issuance of SRPs, and the charging of fees according to group size for camping within the special area. This Business Plan, prepared pursuant to the REA and BLM recreation fee program policy, also addresses the establishment of a permit process and the collection of user fees. It establishes the rationale for charging recreation fees, explains the fee collection process, and outlines how the fees would be used at the Ruby-Horsethief Special Area. The BLM has notified and involved the public at each stage of the planning process, including the proposal to collect fees, through on-site notifications and several public meetings to present and gather ideas concerning fees within the special area. The Northwest Colorado Resource Advisory Committee (NW RAC) considered the proposal at its December 1, 2011, meeting and recommended approval. Future adjustments in the fee amount would be made in accordance with the Business Plan and through consultation with the NW RAC and the public prior to a fee increase. Fee amounts will be posted on-site and online at the MCNCA Web site at: *http://www.blm.gov/co/st/en/nca/mcnca.html.* Copies of the Business Plan will be available at the Grand Junction Field Office and online at the MCNCA Web site.

Authority: 16 U.S.C. 6803(b) and 43 CFR 2932.13.

Steven Hall,

Acting State Director.

[FR Doc. 2012–8615 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below.

DATES: The meeting will be held May 8–9, 2012, in Anchorage, Alaska. The meetings will begin at 9 a.m. in the Subsistence Board Room (second floor), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska. Public comment will be received between 3 and 4 p.m. on Wednesday, May 9, 2012.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or email *jpayne.blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed resource management decisions. This meeting will include continued dialog for developing scenario models for the North Slope and adjacent marine environments. Additionally, the STAP will begin designing a long-term monitoring strategy for the North Slope.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 5, 2012.

Ron Dunton,

Acting State Director.

[FR Doc. 2012–8680 Filed 4–10–12; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for OSM's call for nominations for its Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 11, 2012, in order to be assured of consideration.

ADDRESSES: Please send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, via email to *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov*. You may also review this collection on the Internet by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to approve the collection of information for nominations to OSM's Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards. OSM will request a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Since this is a new information collection request, OSM is seeking a new OMB control number. Responses are voluntary.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on January 17, 2012 (77 FR 2318). OSM received one comment, but it was not relevant to this information collection activity. Therefore, we have not changed the collection in response to the comment. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Reclamation Awards — Call for Nominations.

OMB Control Number: 1029–xxxx.

Summary: This information collection clearance package is being submitted by the Office of Surface Mining Reclamation and Enforcement (OSM) for approval to collect information for our annual call for nominations for our Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards. Since 1986, the Office of Surface Mining has presented awards to coal mine operators who completed exemplary active reclamation. A parallel award program for abandoned mine land reclamation began in 1992. The objective was to give public recognition to those responsible for the nation's most outstanding achievement in environmentally sound surface mining and land reclamation and to encourage the exchange and transfer of successful reclamation technology. The call for nominations has been in existence for years but is currently inactive. This collection request seeks a three-year term of approval.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Industry and state/tribal nominees for reclamation awards and state/tribal reviewers and judges.

Total Annual Responses: 22 active mine respondents, 12 abandoned mine land respondents, and 48 state and tribal reviewers and judges.

Total Annual Burden Hours: 2,406.

Total Annual Non-Wage Burden: $3,400.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 3, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–8510 Filed 4–10–12; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Massachusetts General Laws Chapter 21E

Notice is hereby given that on April 2, 2012, a proposed Consent Decree in *United States* v. *NuStar Terminals Services, Inc., et al.,* Civil Action No. 1:12–cv–10585–DJC, was lodged with the United States District Court for the District of Massachusetts.

In this action, the United States of America (''United States''), on behalf of the Secretary of the Army and the Administrator of the United States Environmental Protection Agency, filed a complaint pursuant to Chapter 21E of the Massachusetts General Laws (''Mass. Gen. L. ch. 21E''), seeking reimbursement of costs the United States has incurred and will incur in responding to contamination resulting from past leakage of liquid aviation fuel from a section of pipeline located within the Massachusetts Military Reservation on Cape Cod, Massachusetts. The pipeline was owned and operated by the Standard Transmission Corporation. The complaint alleges that NuStar Terminals Services, Inc. and SGH Enterprises, Inc. (the ''Settling Defendants'') are successors to Standard Transmission Corporation. SGH Enterprises, Inc. has a claim for indemnification with respect to this matter against W.R. Grace & Co. (the ''Other Settling Party'').

The proposed Consent Decree requires the Settling Defendants and the Other Settling Party to pay a total of $21 million, plus interest, to the United States, in reimbursement of response costs incurred by the United States relating to the pipeline leakage. Of this total, NuStar Terminals Services, Inc. is to pay $11.7 million, plus interest; SGH Enterprises, Inc. is to pay $1.86 million, plus interest; and W.R. Grace & Co. is to pay $7.44 million, plus interest. As part of the settlement, the proposed Consent Decree includes a covenant by the United States not to sue under Mass. Gen. L. ch. 21E, under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607, and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to this case: *United States* v. *NuStar Terminals Services, Inc., et al.,* Civil Action No. 1:12–cv–10585–DJC, D.J. Ref. No. 90–11–2–975. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–5271. If requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the ''U.S. Treasury'' or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–8640 Filed 4–10–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act, The Comprehensive Environmental Response, Compensation and Liability Act, and The Emergency Planning and Community Right-To-Know Act

Notice is hereby given that on April 5, 2012, a proposed Consent Decree (''Consent Decree'') in *United States* v. *Marathon Petroleum Company LP, et al.,* Civil Action No. 2:12-cv-11544–DML–MJH, was lodged with the United States District Court for the Eastern District of Michigan.

In this action, the United States sought injunctive relief and civil penalties from Marathon Petroleum Company LP and its wholly-owned subsidiary, Catlettsburg Refining, LLC (collectively ''MPC''), pursuant to Sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. 7413(b) and 7477; Sections 109 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9609(c) and 9613(b); and Section 325(b)(3) of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11045(b)(3). The alleged violations occurred at six petroleum refineries that MPC owns and operates in the following locations: Robinson, Illinois; Catlettsburg, Kentucky; Garyville, Louisiana; Detroit, Michigan; Canton, Ohio; and Texas City, Texas. The alleged violations involve all twenty-two steam-assisted flares at these refineries.

Under the Consent Decree, MPC is required to minimize flaring and to efficiently combust any gases that are flared. Under the flare minimization terms of the settlement, MPC will implement waste gas minimization plans at each refinery; analyze the root causes of flaring events in order to prevent them in the future; and, after several years of these efforts, comply with ''flaring caps,'' which limit the volume of gas that MPC can flare. Under the flare efficiency terms of the settlement, MPC will install numerous monitoring systems on the flares; integrate the data from the monitoring systems into automatic control logic for operation of the flares; comply with several operating limits that are designed to ensure 98% combustion efficiency; and agree to comply with 98% combustion efficiency at each flare. As a mitigation project, MPC will install controls on the sludge-handling facilities at its Detroit Refinery at an estimated cost of $2.2 million. MPC also will pay a civil penalty of $460,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Marathon Petroleum Company LP, et al.,* D. J. Ref. No. 90–5–2–1–09915.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax number (202) 514–0097; phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $ 49.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–8607 Filed 4–10–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 005–2012]

Privacy Act of 1974; System of Records

AGENCY: Drug Enforcement Administration, United States Department of Justice.

ACTION: Modified System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the United States Department of Justice (''DOJ'' or ''Department'') Drug Enforcement Administration (DEA) proposes to modify JUSTICE/DEA–008, ''Investigative Reporting and Filing System'' (''IRFS''). IRFS was last published in its entirety in the **Federal Register** at 61 FR 54219, Oct. 17, 1996. The Department proposes to modify

IRFS to update, add to, and/or clarify the system location, the categories of individuals covered by the system, the categories of records in the system, the authorities for the maintenance of the system, the purposes of the system, the system's routine uses, the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system, the system manager, the notification procedures, the record access procedures, the contesting record procedures, the record source categories, and the exemptions claimed for the system. These changes are made in the wake of legislative changes, to improve mandated cooperation between law enforcement and intelligence entities, and to reflect the modernization of DEA's information systems.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by May 11, 2012.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue, Suite 1000, Washington, DC 20530, or by facsimile at (202) 307–0693.

FOR FURTHER INFORMATION CONTACT: DEA Headquarters, Attn: CCA/Chief, 8701 Morrissette Drive, Springfield, VA 22152. To ensure proper handling, please reference the CPCLO Order No. on your correspondence.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on the modified system of records.

Dated: March 12, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/DEA–008

SYSTEM NAME:

Investigative Reporting and Filing System

SYSTEM CLASSIFICATION:

Classified and unclassified information.

SYSTEM LOCATION:

Records in this system are located at the Headquarters Offices of the Drug Enforcement Administration (DEA) in the Washington, DC area, at DEA field offices around the world, at Department of Justice Data Centers, at the DEA Data Center, at secure tape backup storage facilities, and at Federal Records Centers. See www.dea.gov for DEA office locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Drug offenders;

B. Alleged drug offenders;

C. Persons suspected of conspiring to commit, aiding or abetting the commission of, or committing a drug offense;

D. Defendants and respondents; and

E. Other individuals related to, or associated with, DEA's law enforcement investigations into and intelligence operations about the individuals described above in subcategories A through D, including witnesses, confidential sources, and victims of crimes.

The offenses and alleged offenses associated with the individuals described above may include criminal, civil, and administrative violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended and related statutes.

F. System users in connection with audit log information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains law enforcement intelligence and investigative information in paper and/or electronic form, including information compiled for the purpose of identifying criminal, civil, and regulatory offenders; reports of investigations; identifying data and notations of arrest, the nature and disposition of allegations and charges, sentencing, confinement, release, and parole and probation status; intelligence information on individuals suspected to be violating laws and regulations; fingerprints and palmprints; laboratory reports of evidence analysis; photographs; records of electronic surveillance; seized property reports; and polygraph examinations. The system also maintains audit log information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority to establish and maintain this system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101, which authorize the Attorney General to create and maintain federal records of agency activities, as well as in specific statutory and regulatory authorities described at 21 U.S.C. 801 et seq., and in E.O. 12333, as amended.

PURPOSE(S):

The purpose of this system is to enforce the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, its implementing regulations, and related statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

(a) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient authority's law enforcement responsibilities.

(b) To any person or entity if deemed by the DEA to be necessary in order to elicit information or cooperation from the recipient for use by the DEA in the performance of an authorized law enforcement activity.

(c) To a domestic or foreign governmental entity lawfully engaged in national security or homeland defense for the entity's official responsibilities.

(d) To a governmental regulatory authority where the information is relevant to the recipient authority's official enforcement responsibilities.

(e) To any person or entity to the extent necessary to prevent an imminent or potential crime which directly threatens loss of life or serious bodily injury.

(f) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(h) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice or the DEA determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(j) To appropriate agencies, entities, and persons when (1) the Department or the DEA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department or the DEA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems

or programs (whether maintained by the Department, the DEA, or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's or the DEA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(k) To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat.

(l) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(m) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(n) To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Departmental regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(o) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

(p) To federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(q) To an appropriate federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(r) To an appropriate state, local, territorial, or tribal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee for a position of public trust, welfare, security, or safety.

(s) To an appropriate federal, state, local, territorial, or tribal agency or entity where the information is relevant to: An application, notice, or similar filing by, to become, be employed by, or be affiliated with a national bank, federal branch or agency of a foreign bank, or insured depository institution; or an administrative proceeding that could lead to an order against a national bank, federal branch or agency of a foreign bank, or insured depository institution or individuals occupying positions as institution-affiliated parties (whether or not such position is held with an insured or non-insured national bank or federal branch or agency or with any other insured depository institution).

(t) To complainants and/or victims (or the immediate family of a deceased victim) to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(u) To any person or entity, where the information is necessary to facilitate the provision of support or assistance to DEA's law enforcement mission.

(v) To a first responder, health care provider, health department, social services department, and youth and family services department for the entity's official responsibilities.

(w) To the director of a treatment agency or the director of a facility to which a juvenile has been committed by the court in accordance with 18 U.S.C. 5038(a)(4).

(x) To a federal, state, local, or territorial department of taxation and department of revenue, for the entity's official responsibilities.

(y) To appropriate persons or entities, including multidisciplinary child abuse teams, in accordance with state or federal child abuse reporting laws.

(z) To a National Guard unit or entity where the information is relevant to its official responsibilities.

(aa) To the United Nations and its employees to the extent that the information is relevant to the recipient's law enforcement or international security functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records in this system are stored on paper and/or electronic media. Electronic records are maintained within information system resources or removable media such as floppy disks, compact disks, magnetic tapes, and optical disks.

RETRIEVABILITY:

Records are retrieved by identifying particulars assigned to individuals such as name, alias, Social Security Number, DEA registration number, and other DEA-assigned number.

SAFEGUARDS:

Both electronic and paper records are safeguarded in accordance with appropriate laws, rules, and policies, including DOJ and DEA policies. They are protected by physical security methods and dissemination and access controls. Access to all records is controlled and limited to approved personnel with an official need for access to perform their duties. Paper files are stored: (1) In a secure room with controlled access; (2) in locked file cabinets; and/or (3) in other appropriate GSA approved security containers. Protection of information system resources is provided by management, operational, and technical security controls. Records are located in a building with restricted access and are kept in a locked room with controlled access, or are safeguarded with an approved encryption technology. The use of individual passwords or user identification codes is required to access information system resources.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with record retention schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Operations, Operations Division and Assistant Administrator for Intelligence, Intelligence Division, DEA Headquarters, 8701 Morrissette Drive, Springfield, VA 22152.

NOTIFICATION PROCEDURE:

Same as Record Access procedures.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in accordance with 28 CFR Part 16 to DEA Headquarters, Attn: Operations Unit (SARF), 8701 Morrissette Drive, Springfield, Virginia 22152. The

envelope and letter should be clearly marked ''Privacy Act Request.'' The request should include a description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, either notarized or submitted under penalty of perjury, and dated. An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination of whether a record may be accessed will be made after a request is received. Although no specific form is required, you may obtain forms for this purpose from the FOIA/PA Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, or on the Department of Justice Web site at *www.usdoj.gov/04foia/att_d.htm.*

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment. An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination of whether a record may be contested or amended will be made after a request is received.

RECORD SOURCE CATEGORIES:

(a) DEA employees, DEA-deputized state and local law enforcement officers, cross-designated federal law enforcement officers, and DEA contractors, (b) Confidential informants, witnesses, and other cooperating individuals and entities, (c) Suspects, defendants, and respondents, (d) federal, state, local, territorial, tribal, and foreign governmental entities, (e) drug and chemical companies, (f) law enforcement databases, (g) public and open source records and commercial database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted records in this system from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), (I), (5), and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

[FR Doc. 2012–8764 Filed 4–10–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding States Triggering ''Off'' in the Emergency Unemployment Compensation 2008 (EUC08) Program and the Federal-State Extended Benefits (EB) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding states triggering ''off'' in the Emergency Unemployment Compensation 2008 (EUC08) program and the Federal State Extended Benefits (EB) Program.

The Department of Labor produces trigger notices indicating which states qualify for both EB and EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for these programs can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

The following changes have occurred since the publication of the last notice regarding states' EB and EUC08 trigger status:

• Based on data released by the Bureau of Labor Statistics on January 24, 2012 the three month average, seasonally-adjusted total unemployment rate (TUR trigger) for Texas fell below the 8.5% threshold to remain ''on'' Tier Four of the EUC08 program. The 13-week mandatory ''on'' period for Texas in Tier Four of the EUC08 program concluded on March 10, 2012. As a result, the week ending March 10, 2012 was the last week in which EUC claimants in Texas could exhaust Tier 3, and establish Tier 4 eligibility. With this change, the maximum potential entitlement in Texas for the EUC08 program decreased from 53 weeks to 47 weeks. Under the phase-out provisions, claimants can receive any remaining entitlement they have in Tier 4 after March 10, 2012.

• Based on data released by the Bureau of Labor Statistics on March 13, 2012, the TUR triggers for Minnesota and Utah fell below the 6% threshold to remain ''on'' in Tier 3 of the EUC08 program. As a result, the current maximum potential entitlement in both of these states in the EUC08 program will decrease from 47 weeks to 34 weeks. The week ending April 7, 2012 will be the last week in which EUC08 claimants in these states can exhaust Tier 2, and establish Tier 3 eligibility. Under the phase-out provisions, claimants in these states can receive any remaining entitlement they have in Tier 3 after April 7, 2012.

• Based on data released by the Bureau of Labor Statistics on March 13, 2012, the TUR triggers for Alabama, Idaho, and Ohio fell below the 8.5% threshold to remain ''on'' in Tier 4 of the EUC08 program. As a result, the current maximum potential entitlement in these states for the EUC08 program will decrease from 53 weeks to 47 weeks. The week ending April 7, 2012 will be the last week in which EUC claimants in these states can exhaust Tier 3, and establish Tier 4 eligibility. Under the phase-out provisions, claimants in these states can receive any remaining entitlement they have in Tier 4 after April 7, 2012.

• Based on data released by the Bureau of Labor Statistics on March 13, 2012, the TUR trigger for Kansas fell to 6.3%, below the 6.5% threshold to remain ''on'', and triggering them ''off'' of the EB program with the week ending March 17, 2012. The payable period for Kansas in the EB program will conclude with the week ending April 7, 2012.

• Based on data released by the Bureau of Labor Statistics on March 13, 2012, the TUR triggers in Colorado, Texas, and West Virginia fell below the 8.0% threshold required to remain ''on'' in a high unemployment period (HUP) for EB. Claimants in these states will remain eligible for up to 20 weeks of benefits through April 7, 2012, but starting April 8, 2012, the maximum potential entitlement in the EB program for these states will decrease from 20 weeks to 13 weeks.

• Based on data released by the Bureau of Labor Statistics on March 13, 2012, as well as revisions to prior year data released on February 29, 2012, Kentucky, Massachusetts, Missouri, Ohio, Oregon, South Carolina, Tennessee, and Wisconsin no longer meet one of the criteria to remain ''on'' in EB, having their current TUR triggers be at least 110% of one of the trigger rates from a comparable prior period in one of the three prior years. This triggers these states ''off'' of the EB program with the week ending March 17, 2012. The payable period in these states for the EB program will conclude with the week ending April 7, 2012.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by public laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, 112–96, and the operating instructions issued to the states by the U.S. Department of Labor. The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor.

In the case of a state concluding an EB period, the State Workforce Agency will furnish a written notice of any change in potential entitlement to each individual who had established eligibility for EB (20 CFR 615.13(c)(4)). Persons who believe they may be entitled to benefits under the EB or EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 30th day of March, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–8618 Filed 4–10–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Electronic Records Archives (ACERA).

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Electronic Records Archives (ACERA). The committee serves as a deliberative body to advise the Archivist of the United States, on technical, mission, and service issues related to the Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation and use of the ERA system. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Electronic Records Archives Program at *era.program@nara.gov.* This meeting will be recorded for transcription purposes.

DATES: The meeting will be held on April 24, 2012, 9 a.m.–5 p.m.

ADDRESSES: The Washington Room, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001.

FOR FURTHER INFORMATION CONTACT: Kimberly Scates, Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740 (301) 837–3176.

SUPPLEMENTARY INFORMATION:

Agenda

- Opening Remarks
- Approval of Minutes
- Transition Update
- 2012 Priorities
- ERA Adoption
- Online Public Access
- Open discussions: big data, reducing reliance on human processing, using challenges and contests
- Adjournment

Dated: April 4, 2012.

Patrice Little Murray,

Alternate Committee Management Officer.

[FR Doc. 2012–8746 Filed 4–10–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Biological Science Advisory Committee; Notice of Meeting: Correction

Summary: The National Science Foundation (NSF) published in the **Federal Register** on April 2, 2012, a notice of an open meeting for the Biological Sciences Advisory Committee, #1110. This notice is to correct the year of the meeting date.

Correction

On page 19740, column 2, under *Date and Time,* please replace ''April 26, 2011; 1 p.m. to 3 p.m.'' with ''April 26, 2012; 1 p.m. to 3 p.m.''

Dated: April 5, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–8623 Filed 4–10–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meeting

The National Science Board's Committee on Strategy and Budget Task Force on Data Policies, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Thursday, April 19, from 4 p.m. to 5 p.m., EDT.

SUBJECT MATTER: Discussion of a continuation of the National Science Board's focus on data policies.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Blane Dahl, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–8862 Filed 4–9–12; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0058]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.

2. *Current OMB approval number:* 3150–0017.

3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. Information submitted in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

4. *Who is required or asked to report:* All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

5. *The number of annual respondents:* 22,091 (2,959 NRC Licensees and 19,132 Agreement State Licensees).

6. *The number of hours needed annually to complete the requirement or request:* 302,697 (NRC licensees 40,327 hours [18,258 reporting + 22,069 recordkeeping] and Agreement State licensees 262,370 hours [118,913 reporting + 143,457 recordkeeping]).

7. *Abstract:* Title 10 of the Code of Federal Regulations (10 CFR) Part 30 establishes requirements that are applicable to all persons in the United States governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the possession, use, and transfer of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety.

Submit, by June 11, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Comments submitted should reference Docket No. NRC–2012–0058. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2012–0058. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 4th day of April, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–8590 Filed 4–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0055]

Changes to the Generic Aging Lessons Learned (GALL) Report Revision 2 AMP XI.M41, ''Buried and Underground Piping and Tanks''

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of comment period.

SUMMARY: On March 9, 2012 (77 FR 14446), the U.S. Nuclear Regulatory Commission (NRC) published a request for public comments on Draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–03, ''Changes to GALL Report Revision 2 Aging Management Program (AMP) XI.M41, 'Buried and Underground Piping and Tanks.' '' The draft LR–ISG pertains to the changes to the NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' and the NRC staff's aging management review procedure and acceptance criteria contained in NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (SRP–LR),'' concerning the Buried and Underground Piping and Tanks Aging Management Program. Comments were to be submitted by April 9, 2012. The purpose of this document is to reopen the public comment period on the LR–ISG–2011–03 to allow more time for stakeholders to assemble comments.

DATES: The comment period has been reopened and now closes on April 20, 2012. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0055. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0055. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. William Holston, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8573; email: *William.Holston@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0055 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0055.

• *NRC's Interim Staff Guidance Web Site:* The LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft LR–ISG–2011–03 is available in ADAMS under Accession No. ML11244A058. The GALL Report and SRP–LR are available in ADAMS under Accession Nos. ML103490041 and ML103490036, respectively.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0055 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

On March 9, 2012 (77 FR 14446), the NRC requested public comments on draft LR–ISG–2011–03. Comments were to be submitted by April 9, 2012. By letter dated March 27, 2012, the Nuclear Energy Institute (NEI) requested the comment period be closed on April 20, 2012. The NRC staff is granting NEI's request. The NRC staff believes that granting the request to close the comment period on April 20, 2012, will allow stakeholders a chance to better prepare their responses to LR–ISG–2011–03.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of April 2012.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–8670 Filed 4–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on April 26, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552(b)(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, April 26, 2012–8:30 a.m. Until 5 p.m.

The Subcommittee will review the Safety Evaluation (SER) associated with the St. Lucie 1 extended power uprate application. The Subcommittee will hear presentations by and hold discussions with the NRC staff, the licensee, Florida Power and Light Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Weidong Wang (Telephone 301–415–6279 or Email: *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron

Brown (240–888–9835) to be escorted to the meeting room.

Dated: March 26, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–8666 Filed 4–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0089; Docket Nos. 52–027 and 52–028; License Nos. NPF–93 and NPF–94; EA–12–063]

South Carolina Electric And Gas Company (Virgil C. Summer Nuclear Station Units 2 and 3); Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (Effective Immediately)

I

The Licensee identified in this Order holds licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation and construction of nuclear power plants in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

II

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height, that inundated the Fukushima Dai-ichi nuclear power plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan.

When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3 were in operation and Units 4, 5, and 6 were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel was offloaded to the Unit 4 spent fuel pool. Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators (EDGs) started at all six units providing alternating current (ac) electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal.

Approximately 40 minutes following the earthquake and shutdown of the operating units, the first large tsunami wave inundated the site, followed by additional waves. The tsunami caused extensive damage to site facilities and resulted in a complete loss of all ac electrical power at Units 1 through 5, a condition known as station blackout. In addition, all direct current electrical power was lost early in the event on Units 1 and 2 and after some period of time at the other units. Unit 6 retained the function of one air-cooled EDG. Despite their actions, the operators lost the ability to cool the fuel in the Unit 1 reactor after several hours, in the Unit 2 reactor after about 70 hours, and in the Unit 3 reactor after about 36 hours, resulting in damage to the nuclear fuel shortly after the loss of cooling capabilities.

The Unit 4 spent fuel pool contained the highest heat load of the six units with the full core present in the spent fuel pool and the refueling gates installed. However, because Unit 4 had been shut down for more than 3 months, the heat load was low relative to that present in spent fuel pools immediately following shutdown for reactor refueling. Following the earthquake and tsunami, the operators in the Units 3 and 4 control room focused their efforts on stabilizing the Unit 3 reactor. During the event, concern grew that the spent fuel was overheating, causing a high-temperature reaction of steam and zirconium fuel cladding generating hydrogen gas. This concern persisted primarily due to a lack of readily available and reliable information on water levels in the spent fuel pools. Helicopter water drops, water cannons, and cement delivery vehicles with articulating booms were used to refill the pools, which diverted resources and attention from other efforts. Subsequent analysis determined that the water level in the Unit 4 spent fuel pool did not drop below the top of the stored fuel and no significant fuel damage occurred. The lack of information on the condition of the spent fuel pools contributed to a poor understanding of possible radiation releases and adversely impacted effective prioritization of emergency response actions by decision makers.

Following the events at the Fukushima Dai-ichi nuclear power plant, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC regulations and processes and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011. These recommendations were modified by the NRC staff following interactions with stakeholders. Documentation of the NRC staff's efforts is contained in SECY–11–0124, ''Recommended Actions To Be Taken Without Delay From the Near-Term Task Force Report,'' dated September 9, 2011, and SECY–11–0137, ''Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned,'' dated October 3, 2011.

As directed by the Commission's Staff Requirements Memorandum (SRM) for SECY–11–0093, the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. SECY–11–0124 and SECY–11–0137 established the NRC staff's prioritization of the recommendations based upon the potential safety enhancements.

Current regulatory requirements and existing plant capabilities allow the NRC to conclude that a sequence of events such as the Fukushima Dai-ichi accident is unlikely to occur in the United States. Therefore, continued operation and continued licensing activities do not pose an imminent threat to public health and safety. However, the NRC's assessment of new insights from the events at Fukushima Dai-ichi leads the NRC staff to conclude that additional requirements must be imposed on Licensees and CP holders to increase the capability of nuclear power plants to mitigate beyond-design-basis external events. These additional requirements represent a substantial increase in the protection of public health and safety. The Commission has decided to administratively exempt this Order from applicable provisions of the Backfit Rule, 10 CFR 50.109, and the issue finality requirements in 10 CFR 52.63 and 10 CFR Part 52, Appendix D, Paragraph VIII.

Additional details on an acceptable approach for complying with this Order will be contained in final interim staff guidance (ISG) scheduled to be issued by the NRC in August 2012. This guidance will include a template to be used for the plan that will be submitted in accordance with Section IV, Condition C.1 below.

III

Reasonable assurance of adequate protection of public health and safety

and assurance of the common defense and security are the fundamental NRC regulatory objectives. Compliance with NRC requirements plays a critical role in giving the NRC confidence that Licensees and CP holders are maintaining an adequate level of public health and safety and common defense and security. While compliance with NRC requirements presumptively ensures adequate protection, new information may reveal that additional requirements are warranted. In such situations, the Commission may act in accordance with its statutory authority under Section 161 of the Atomic Energy Act of 1954, as amended, to require Licensees and CP holders to take action in order to protect health and safety and common defense and security.

To protect public health and safety from the inadvertent release of radioactive materials, the NRC's defense-in-depth strategy includes multiple layers of protection: (1) Prevention of accidents by virtue of the design, construction, and operation of the plant; (2) mitigation features to prevent radioactive releases should an accident occur; and (3) emergency preparedness programs that include measures such as sheltering and evacuation. The defense-in-depth strategy also provides for multiple physical barriers to contain the radioactive materials in the event of an accident. The barriers are the fuel cladding, the reactor coolant pressure boundary, and the containment. These defense-in-depth features are embodied in the existing regulatory requirements and thereby provide adequate protection of public health and safety.

In the case of spent fuel pools, compliance with existing regulations and guidance presumptively provides reasonable assurance of the safe storage of spent fuel. In particular, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50 establishes the general design criteria (GDC) for nuclear power plants. All currently operating reactors were licensed to the GDC or meet the intent of the GDC. The GDC provide the design features of the spent fuel storage and handling systems and the protection of these systems from natural phenomena and operational events. The accidents considered during licensing of U.S. nuclear power plants typically include failure of the forced cooling system and loss of spent fuel pool inventory at a specified rate within the capacity of the makeup water system. Further, spent fuel pools at U.S. nuclear power plants rely on maintenance of an adequate inventory of water under accident conditions to provide containment, as well as the cooling and shielding safety functions.

During the events in Fukushima, responders were without reliable instrumentation to determine water level in the spent fuel pool. This caused concerns that the pool may have boiled dry, resulting in fuel damage.[1] Fukushima demonstrated the confusion and misapplication of resources that can result from beyond-design-basis external events when adequate instrumentation is not available.

The spent fuel pool level instrumentation at U.S. nuclear power plants is typically narrow range and, therefore, only capable of monitoring normal and slightly off-normal conditions. Although the likelihood of a catastrophic event affecting nuclear power plants and the associated spent fuel pools in the United States remains very low, beyond-design-basis external events could challenge the ability of existing instrumentation to provide emergency responders with reliable information on the condition of spent fuel pools. Reliable and available indication is essential to ensure plant personnel can effectively prioritize emergency actions.

The Commission has determined that the spent fuel pool instrumentation required by this Order represents a significant enhancement to the protection of public health and safety and is an appropriate response to the insights from the Fukushima Dai-ichi accident. While this consideration is qualitative in nature, the Commission has long taken the position that the determination as to whether proposed backfits represent a substantial safety improvement may be qualitative in nature. Staff Requirements Memorandum, SECY–93–086, ''Backfit Considerations'' (June 30, 1993), pp. 1–2. However the Commission does not, at this time, have sufficient information to complete a full backfit analysis of the spent fuel pool instrumentation that would be required by this Order. The NRC is analyzing the insights gained from the Fukushima Dai-ichi accident on an accelerated timeline. Additionally, the NRC has considered the Congressional intent that the agency act expeditiously on Tier 1 recommendations.

The Commission has recognized, in exceptional circumstances, that some proposed rules may not meet the requirements specified in the Backfit Rule but nevertheless should be adopted by the NRC. Hence, the Commission advised the NRC staff that it would consider, on a case-by-case basis, whether a proposed regulatory action should be adopted as an ''exception'' to the Backfit Rule. This Order represents such a case. Therefore, the Commission has decided to administratively exempt this Order from the Backfit Rule and the issue finality requirements in 10 CFR 52.63 and 10 CFR Part 52, Appendix D, paragraph VIII for several reasons.

The Fukushima Dai-ichi accident was unprecedented in terms of initiating cause and the particular failure sequence. In addition, our review of this event has highlighted the benefits that can be derived from the availability of more diverse instrumentation. Consistent with the final Aircraft Impact Assessment Rule, 10 CFR 50.150, 74 FR 28112 (June 12, 2009), the Commission's decision to administratively exempt this Order from compliance with the Backfit Rule is a highly exceptional action limited to the insights associated with the extraordinary underlying circumstances of the Fukushima Dai-ichi accident and the NRC's lessons learned. Furthermore, the extensive stakeholder engagement and broad endorsement for timely action support the Commission's judgment that immediate action to commence implementation of the spent fuel monitoring requirements is warranted at this time. In addition, pursuant to 10 CFR 2.202, the NRC finds that the public health, safety, and interest require that this Order be made immediately effective.

Based upon the considerations set forth above, the Commission has determined that the Licensee must have a reliable means of remotely monitoring wide-range spent fuel pool levels to support effective prioritization of event mitigation and recovery actions in the event of a beyond-design-basis external event. These new requirements provide a greater capability, consistent with the overall defense-in-depth philosophy, and therefore greater assurance of protection of public health and safety from the challenges posed by beyond-design-basis external events to power reactors. Accordingly, the Commission concludes that combined licenses (COLs) NPF–93 and NPF–94 shall be modified to include the requirements identified in Attachment 1 to this Order.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Parts 50 and 52, *It is hereby ordered, effective immediately,*

[1] *See Institute of Nuclear Power Operations (INPO) 11–005, ''Special Report on the Nuclear Accident at the Fukushima Daiichi Nuclear Power Station,'' Revision 0, issued November 2011, p. 36.*

That COLS NPF–93 AND NPF–94 are modified as follows:

A. 1. The Licensee shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the license. The Licensee shall promptly start implementation of the requirements in Attachment 1 to the Order and shall complete full implementation prior to initial fuel load.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe and secure operation of the facility, it must notify the Commission, within twenty (20) days of this Order, of the adverse impact, the basis for its determination that the requirement has an adverse impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, within one (1) year after issuance of the final ISG, submit to the Commission for review an overall integrated plan, including a description of how compliance with the requirements described in Attachment 1 will be achieved.

2. The Licensee shall provide an initial status report sixty (60) days after the issuance of the final ISG, and at six (6)-month intervals following submittal of the overall integrated plan, as required in Condition C.1, which delineates progress made in implementing the requirements of this Order.

3. The Licensee shall report to the Commission when full compliance with the requirements described in Attachment 1 is achieved.

The Licensee's responses to Conditions B.1, B.2, C.1, C.2, and C.3, above, shall be submitted in accordance with 10 CFR 50.4 and 10 CFR 52.3, as applicable.

The Director, Office of New Reactors may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order.

If a hearing is requested by the Licensee, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions

should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at MSHD.Resource@nrc.gov, or by a toll-free call at 1-(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 30th day of March 2012.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Director, Office of New Reactors.

Attachment 1—Requirements for Reliable Spent Fuel Pool Level Instrumentation at Combined License Holder Reactor Sites

Attachment 2 to the March 12, 2012, Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (available at the NRC's Agencywide Documents Access and Management System (ADAMS) under ADAMS accession number ML12054A679) for Part 50 Licensees, requires reliable indication of the water level in associated spent fuel storage pools capable of supporting identification of the following pool water level conditions by trained personnel: (1) Level that is adequate to support operation of the normal fuel pool cooling system, (2) level that is adequate to provide substantial radiation shielding for a person standing on the spent fuel pool operating deck, and (3) level where fuel remains covered and actions to implement make-up water addition should no longer be deferred.

The design bases of V.C. Summer Units 2 and 3 address many of these attributes of spent fuel pool level instrumentation. The NRC staff reviewed these design features prior to issuance of the combined licenses for these facilities and certification of the AP1000 design referenced therein. The AP1000 certified design largely addresses the requirements in Attachment 2 of the March 12, 2012 Order by providing two safety-related spent fuel pool level instrument channels. The instruments measure the level from the top of the spent fuel pool to the top of the fuel racks to address the range requirements listed above. The safety-related classification provides for the following additional design features:

- Seismic and environmental qualification of the instruments.
- Independent power supplies.
- Electrical isolation and physical separation between instrument channels.
- Display in the control room as part of the post-accident monitoring instrumentation.
- Routine calibration and testing.

As such, this Order requires V.C. Summer Units 2 and 3 to address the following requirements that were not specified in the certified design.

1. The spent fuel pool level instrumentation shall include the following design features:

1.1 Arrangement: The spent fuel pool level instrument channels shall be arranged in a manner that provides reasonable protection of the level indication function against missiles that may result from damage to the structure over the spent fuel pool. This protection may be provided by locating the safety-related instruments to maintain instrument channel separation within the spent fuel pool area, and to utilize inherent shielding from missiles provided by existing recesses and corners in the spent fuel pool structure.

1.2 Qualification: The level instrument channels shall be reliable at

temperature, humidity, and radiation levels consistent with the spent fuel pool water at saturation conditions for an extended period.

1.3 Power supplies: Instrumentation channels shall provide for power connections from sources independent of the plant alternating current (ac) and direct current (dc) power distribution systems, such as portable generators or replaceable batteries. Power supply designs should provide for quick and accessible connection of sources independent of the plant ac and dc power distribution systems. Onsite generators used as an alternate power source and replaceable batteries used for instrument channel power shall have sufficient capacity to maintain the level indication function until offsite resource availability is reasonably assured.

1.4 Accuracy: The instrument shall maintain its designed accuracy following a power interruption or change in power source without recalibration.

1.5 Display: The display shall provide on-demand or continuous indication of spent fuel pool water level.

2. The spent fuel pool instrumentation shall be maintained available and reliable through appropriate development and implementation of a training program. Personnel shall be trained in the use and the provision of alternate power to the safety-related level instrument channels.

[FR Doc. 2012–8669 Filed 4–10–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes To Close March 30, 2012, Meeting

By telephone vote on March 30, 2012, members of the Board of Governors of the United States Postal Service met and voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that no earlier public notice was possible.

ITEMS CONSIDERED:

1. Strategic Issues.
2. Financial Matters.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2012–8868 Filed 4–9–12; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17g–2, SEC File No. 270–564, OMB Control No. 3235–0628.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–2 (17 CFR 240.17g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17g–2, ''Records to be made and retained by nationally recognized statistical rating organizations,'' implements the Commission's recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.[1] The rule requires a Nationally Recognized Statistical Rating Organization (''NRSRO'') to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained. The Commission estimates that the burden associated with Rule 17g–2 is 2,987, which includes one-time reporting burdens for processing reports, and a cost of $5,933, which includes a one-time cost for recordkeeping software.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 5, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8715 Filed 4–10–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78q.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66742; File No. SR–OCC–2012–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Relating to Rescinding a Policy Interpretation Affecting Certain Adjustments

April 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on March 26, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(1)[4] thereunder.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule change would rescind a policy interpretation adopted by the OCC Securities Committee relating to the possible reclassification of recurrent cash dividends for adjustment purposes. A conforming change would also be made to the corresponding policy applicable to security futures.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

Under Article VI, Section 11 of the OCC By-Laws, the Securities Committee (''Committee''), (which is comprised of representatives of all participant options exchanges and OCC) may adopt statements of policy or interpretations pertaining to adjustments to the terms of listed options in response to corporate events. All adjustments to particular options are determined on a case by case basis by adjustment panels of the Committee convened for that purpose.

Interpretation and Policy .01 (''Interpretation'') under Article VI, Section 11A of OCC's By-Laws provides that cash dividends or distributions by the issuer of the underlying security that are ''non-ordinary'' will normally result in an adjustment to the terms of listed stock options. In 2010, an amendment (the ''Amendment'') was effected to the Interpretation, and to the corresponding interpretation under Section 3 of Article XII (applicable to security futures), under which the Committee could under certain conditions cease adjusting for recurring cash dividends previously deemed to be non-ordinary dividends based on subsequent facts suggesting that the dividends should be reclassified as ''ordinary''. (OCC and not the Committee determines adjustment made under Article XII, Section 3 although one of the criteria for OCC to use is ''consistency with the actions of the Securities Committee in making adjustments to options on the same underlying interest''.)

The Amendment set forth the conditions under which the Committee could cease adjusting for non-ordinary cash dividends as: (i) The issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment whether or not the amounts paid were the same from period to period, or (iii) the Committee determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis. In fairness to existing holders of open interest who may have assumed option positions with the belief that the Committee would continue to adjust for these recurring ''special'' dividends, the Amendment was made effective only for dividends and distributions announced after February 1, 2012.

The purpose of this rule change is to rescind the change in policy allowing reclassification of certain dividends that was to be implemented on February 1, 2012, under the aforementioned Amendment.

1. Background

The Amendment was prompted by a series of cash dividends declared by Diamond Offshore Corporation (''DO''). DO characterized these dividends as ''special'' and differentiated them from the company's ''regular'' cash dividends. The ''special'' and ''regular'' DO dividends have customarily gone ''ex-distribution'' on the same date, and DO has declared a special dividend for every quarter since the fourth quarter of 2007. Initially, the Committee deemed these ''special'' dividends to be non-ordinary under the Interpretation and adjusted listed options in response. However, the frequent adjustment to DO listed options in response to the recurrent special dividends caused serious operational problems in terms of option symbol and series proliferation that in turn adversely affected liquidity for the adjusted series. (Volume tends to gravitate to the standard option symbol and series at the expense of the adjusted option symbol and series.) The Committee and others felt that such DO dividends had been declared so consistently and predictably that they should no longer be considered ''non-ordinary'' for adjustment purposes. Accordingly, the Committee adopted the Amendment.

As the February 1, 2012, effective date approached, OCC and the Committee became aware of investor questions and concerns regarding the application of the reclassification policy. Consistent with other adjustment provisions, the Amendment was written to provide the Committee with discretion to respond to future events. Assuming the criteria referenced above are satisfied, the Amendment provides that the Committee may exercise its best judgment to determine on a case by case basis whether a ''special'' dividend will be reclassified as ordinary so that adjustments on the overlying options and futures would cease. However, in considering investor questions and concerns, OCC and the Committee became aware that investors sought more definitive guidance about the likelihood of individual decisions under the Amendment. For example, although the Amendment indicates the Committee may reclassify special dividends as ordinary, it does not express criteria that will aid investors in anticipating when the Committee will reclassify such dividends. The Committee considered a range of hypothetical cases and found it difficult to identify and articulate in advance clear, specific considerations that would lead to particular outcomes across the wide range of cases that the Committee may be called upon to consider. The Committee was also concerned that if the Amendment was further modified to make its applications ''automatic'' and thereby predictable, it could be ''locked in'' to actions it would otherwise deem inadvisable (for example, not adjusting for a dramatically large special dividend declared after adjustments ''automatically'' ceased). In addition, the Committee was informed that announcing decisions to cease adjusting for recurring special dividends at the time of the final adjustment, as was the intention under the Amendment and was announced in OCC Information Memos, did not provide enough guidance to traders. (For example, traders of 2014 LEAPS options do not want to wait until the 2012 special dividend to learn whether the anticipated 2013 dividend would be reclassified as ordinary.)

In view of the uncertain application of the Amendment, the Committee decided to adjust for the February 2012 DO special dividend and to not take the opportunity afforded by the Amendment to cease adjusting for future DO special dividends. While the decision not to reclassify was within the discretion of the Committee as set forth in the Amendment and was explained in OCC information memoranda, it appears to have caused further investor confusion. Therefore, the Committee recommended to the Board of Directors of OCC that OCC seek approval to rescind the reclassification policy as provided in the Amendment.

2. Rationale for the Proposal To Amend the OCC By-Laws

OCC and the Committee especially note three factors which favor rescinding the re-classification policy: (1) An industry change to options symbology (implemented after the adoption of the rescission policy) has substantially alleviated the operational

burdens associated with recurrent adjustments (especially option symbol proliferation), which were highlighted in the instance of DO (With this change in symbology, all adjusted series can normally be housed under the standard option symbol, dramatically reducing option symbol proliferation.); (2) OCC and the Committee believe alleviation of investor uncertainty is of paramount importance and have concluded that attempts to further modify the Amendment to provide more specific guidance about the application of the Amendment to particular cases may be complicated and thereby create even more uncertainty for investors; and (3) If the reclassification policy is rescinded, non-ordinary dividends which have occasioned adjustments in the past will ordinarily continue to occasion adjustments in the future and thus alleviate investor uncertainty.

The reclassification policy applied to listed options was discussed in and published in interpretative guidance, which will be updated to reflect its rescission.[5] Clean and marked copies of the updated interpretative guidance are available as described below. The marked copy shows changes from the current language.

* * * * *

The proposed change is consistent with Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions and the protection of investors and reduces unnecessary costs and burdens on investors and persons facilitating transactions on their behalf. It does so in response to investor feedback by reducing uncertainty regarding adjustments for certain cash dividends and distributions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[5] See Exchange Act Release Nos. 34–58059 (June 30, 2008), 73 FR 36367 (July 9, 2008); 34–59442 (February 24, 2009), 74 FR 9654 (March 5, 2009); and 34–62879 (September 9, 2010), 75 FR 56631 (September 16, 2010). Consistent with past practice, the interpretative guidance will be available on OCC's public Web site but not incorporated into OCC's By-Laws and Rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not solicited and does not intend to solicit comments regarding this proposed rule change. OCC has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b–4 thereunder and therefore became effective on filing although OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–OCC–2012–05 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–OCC–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_05.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–05 and should be submitted on or before May 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8708 Filed 4–10–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66743; File No. SR–CBOE–2012–034]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Correct Hyperlink in Rule 5.5A

April 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to correct a hyperlink to the Options Listing Procedures Plan (''OLPP'') in Rule 5.5A. No substantive changes are proposed in this filing. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–CBOE–2009–084, the Exchange codified in new Rule 5.5A certain provisions of the OLPP pertaining to selecting new option series and certain strike setting parameters that had been previously adopted under the OLPP.[3] As a courtesy to users of the Exchange's electronic rules, CBOE set forth the hyperlink to a complete copy of the OLPP in Rule 5.5A(a). The Options Clearing Corporation maintains the Web site where the complete copy of the OLPP is located. The hyperlink in Rule 5.5A(a) has changed since Rule 5.5A was originally adopted. CBOE now proposes to amend Rule 5.5A(a) by setting forth the updated hyperlink to a complete copy of the OLPP. No substantive changes to CBOE rules are being made by this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal will protect investors and the public interest by providing them with the correct hyperlink from which to access a complete copy of the OLPP.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–034 and should be submitted on or before May 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8709 Filed 4–10–12; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 60995 (November 13, 2009), 74 FR 60008 (November 19, 2009) (Notice of Filing and Immediate Effectiveness of Proposal to Codify Certain Provisions of the Options Listing Procedures Plan into CBOE's Rules).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66747; File No. SR–NASDAQ–2012–047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Investor Support Program and the Extended Hours Investor Program Under Rule 7014 and To Amend the Liquidity Provider Rebate Schedule Under Rule 7018

April 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes (i) to modify the Investor Support Program and the Extended Hours Investor Program under Rule 7014, and (ii) to amend NASDAQ's liquidity provider rebate schedule under Rule 7018. NASDAQ will implement the proposed change on April 2, 2012. The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Investor Support Program

NASDAQ is proposing to make a minor modification to the Investor Support Program (the ''ISP'') under Rule 7014. The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (''targeted liquidity''). The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[3] The Exchange noted in its original filing to institute the ISP [4] that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

On March 1, 2012, the Exchange added an additional method for members to qualify for an ISP rebate that included a criterion focused on liquidity provision through Public Customer Orders in the NASDAQ Options Market.[5] The Exchange is now proposing a minor modification to this recently introduced aspect of the ISP (the ''Options Tier'').

The Options Tier recognized the extent to which members that represent retail and/or institutional investors are active in trading both cash equities and options on behalf of such customers. In fact, to an increasing extent the customers that such members represent simultaneously trade different asset classes within a single investment strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. The NASDAQ Market Center fee schedule for order execution and routing in Rule 7018 also recognizes the convergence between cash equities and options trading through liquidity provider rebate tiers available to members active in both the NASDAQ Market Center and the NASDAQ Options Market.

Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. For members qualifying for the Options Tier, NASDAQ pays a credit of $0.0003 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more. The specific criteria for the Options Tier are as follows:

(1) The member's Participation Ratio [6] for the month exceeds its Baseline Participation Ratio [7] by at least 0.30%.

[3] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[4] Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness).

[5] Securities Exchange Act Release No. 66544 (March 8, 2012), 77 FR 15163 (March 14, 2012) (SR–NASDAQ–2012–032).

[6] ''Participation Ratio'' is defined as follows: ''[F]or a given member in a given month, the ratio of (A) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume.'' ''Consolidated Volume'' is defined as follows: ''[F]or a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' ''System Securities'' means all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[7] ''Baseline Participation Ratio'' is defined as follows: ''[W]ith respect to a member, the lower of

Continued

In general terms, the Baseline Participation Ratio is the ratio of shares of liquidity provided by the member in NASDAQ for the month of August 2010 or August 2011 (whichever is lower) to the total consolidated volume for that month. To the extent that a member's participation in NASDAQ equals or exceeds its Baseline Participation Ratio (*i.e.,* to the extent that the member at least matches its participation in NASDAQ during the lower of August 2010 or August 2011), the member may be eligible for the program. Exceeding the Baseline Participation Ratio by specified amounts may qualify the member for higher credits under the ISP. The requirement reflects the expectation that a member participating in the program must maintain or increase its participation in NASDAQ as compared with an historical baseline.

(2) The member's ''ISP Execution Ratio'' for the month must be less than 10. The ISP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.'' [8] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month, reflecting the ISP goals of encouraging higher levels of liquidity provision.

(4) At least 80% of the liquidity provided by the member during the month is provided through ISP-designated ports. This requirement is designed to mitigate ''gaming'' of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders.

(5) The member has an average daily volume during the month of 100,000 or more contracts of liquidity provided through one or more of its Nasdaq Option Market market participant identifiers (''MPIDs''), provided that such liquidity is provided through Public Customer Orders, as defined in Chapter I, Section 1 of the Nasdaq Options Market Rules. That rule defines Public Customer Order as an order for the account of a person that is not a broker or a dealer. Thus, in keeping with the goal of the ISP to encourage participation by retail and institutional investors and the members that represent them in exchange markets, the criterion focused on options requires a specified level of liquidity provision through orders that are directly identified under Nasdaq Options Market rules as having characteristics consistent with this goal.

(6) The member's ratio between shares of liquidity provided through ISP-designated ports and total shares accessed, provided, or routed through ISP-designated ports during the month is at least 0.80. This additional criterion reflects a goal of ensuring that the qualifying member is using its ISP-designated ports substantially for liquidity provision, in keeping with the ISP's overall goal of drawing liquidity-providing orders to exchange markets. In this proposed rule change, NASDAQ is proposing to reduce the required ratio to 0.70. NASDAQ believes that the change will encourage more members to seek to qualify for the Options Tier. Therefore, even though the change will reduce the liquidity requirement for qualifying members, NASDAQ believes that the change is still consistent with the Exchange's goal of drawing liquidity-providing orders to exchange markets.

Extended Hours Investor Program

NASDAQ is also proposing to make a similar change to its Extended Hours Investor Program (the ''EHIP''). The EHIP is designed to encourage greater use of NASDAQ's facilities for trading before the market open at 9:30 a.m., after the market close at 4 p.m., and throughout the trading day. The goal of the program is to encourage the development of a deeper, more liquid trading book during pre-market and post-market hours, while also recognizing the correlation observed by NASDAQ between levels of liquidity provided during these trading sessions and levels provided during regular trading hours.

Under the program, a member is required to designate one or more MPIDs for use under the program. The member then qualifies for an extra rebate of $0.0002 per share executed with respect to all displayed liquidity provided through a designated MPID that executes at a price of $1 or more during the month if the following conditions are met:

(1) the MPID's ''EHIP Execution Ratio'' for the month is less than 10. The EHIP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through an EHIP-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such EHIP-designated MPID and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) no order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders [9] shall be included in the tabulation.'' Thus, the requirement stipulates that a high proportion of potentially liquidity-providing orders entered through the MPID actually execute and provide liquidity. This requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) The member must provide (i) an average daily volume of 2 million or more shares of liquidity during the month using orders that are entered through its designated MPID and executed prior to NASDAQ's Opening Cross, *or* (ii) an average daily volume of 3 million or more shares of liquidity during the month using orders that are entered through its designated MPID and executed prior to the Nasdaq Opening Cross and/or after the Nasdaq Closing Cross. NASDAQ has observed that members that provide higher volumes of liquidity-providing orders during the pre-market or post-market hours generally do so throughout the rest of the trading day. Accordingly, the program pays a credit with respect to all liquidity-providing orders, but only in the event that comparatively large

such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).'' ''Indirect Order Flow'' is defined as follows: ''[F]or a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member's direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month.''

[8] These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of ''immediate or cancel'' orders and therefore cannot be liquidity-providing orders.

[9] *See supra* n.8.

volumes of such orders execute outside of regular market hours.

(3) The ratio between shares of liquidity provided through the MPID and total shares accessed, provided, or routed through the MPID during the month is at least 0.80. This requirement reflects the program's goal of encouraging members that provide high levels of liquidity in the pre-market and/or after-hours trading sessions to also do so during the rest of the trading day. In this proposed rule change, NASDAQ proposes to reduce the required ratio to 0.70. NASDAQ believes that the change will encourage more members to seek to qualify for the EHIP. Therefore, even though the change will reduce the liquidity requirement for qualifying members, NASDAQ believes that the change is still consistent with the Exchange's goal of using the EHIP to encourage high levels of liquidity provision throughout the trading day.

Rebate Schedule

Finally, NASDAQ is amending Rule 7018(a) to make a minor modification to two of its liquidity-provider rebate tiers.[10] Currently, NASDAQ pays a rebate of $0.0010 per share executed for non-displayed quotes/orders, and $0.0025 per share executed for other quotes/orders, if a member satisfies the following criteria: (i) the member provides shares of liquidity in all securities during the month representing more than 0.10% of Consolidated Volume[11] during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) the member has an average daily volume during the month of more than 115,000 contracts of liquidity accessed or provided through one or more of its NASDAQ Options Market MPIDs. NASDAQ is proposing to reduce the options contract requirement from 115,000 to 100,000, to reflect lower overall trading volumes in options markets and thereby make the rebate tier available to a wider number of market participants. Similarly, NASDAQ pays a rebate of $0.0015 per share executed for non-displayed quotes/orders, and $0.0029 per share executed for other quotes/orders, if a member satisfies the following criteria: (i) the member provides shares of liquidity in all securities during the month representing more than 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) the member has an average daily volume during the month of more than 115,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs. NASDAQ is also proposing to reduce the options contract requirement of this tier from 115,000 to 100,000, for identical reasons.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. Although the proposed change lowers the amount of liquidity that a member must provide through ISP-designated ports in order to qualify for the Options Tier, NASDAQ believes that the change may result in an even greater amount of targeted liquidity being provided to the NASDAQ Market Center and the NASDAQ Options Market, because more members will seek to qualify for the tier by routing targeted liquidity to NASDAQ rather than other trading venues.

The rule change proposal, like the original ISP, is not designed to permit unfair discrimination, but rather is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Thus, the modified Options Tier will make the incentive provided by the tier available to a wider range of market participants, and thereby seeks to benefit all market participants by encouraging more members to provide targeted liquidity to the Exchange.

Likewise, the proposal, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of liquidity-providing orders that they submit in order to qualify for the modified Options Tier would be benefitting all investors, and therefore providing credits to them, as contemplated by the ISP, is equitable. Moreover, NASDAQ believes that the level of the credit available through the Options Tier—$0.0003 per share for displayed liquidity provided through ISP-designated ports and $0.0001 per share for other displayed liquidity—is reasonable, in that it is comparable to the added rebates of $0.0001, $0.0003, or $0.0004 per share executed provided under other ISP tiers, and does not reflect a disproportionate increase above the rebates provided to all members with respect to the provision of displayed liquidity under Rule 7018, which range from $0.0020 to $0.00295 per share executed. NASDAQ further notes that by modifying the Options Tier, NASDAQ is effectively reducing fees for members qualifying for the modified tier without making any offsetting fee increases.

The EHIP is not unfairly discriminatory because it is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. The proposed modifications to the program will make the EHIP incentive available to a wider range of market participants, and thereby seeks to benefit all market participants by encouraging more members to provide liquidity to the Exchange. Likewise, the EHIP, and the proposed modifications to the EHIP, are consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members that choose to significantly increase the volume of EHIP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to such members, as contemplated in the proposed modified program, is equitable. Although the liquidity-provision requirements of the program are being reduced, NASDAQ believes that the modification may increase the overall level of liquidity provision by encouraging more members to participate. Moreover, NASDAQ believes that the level of the credit—$0.0002 per share, in addition to credits ranging from $0.0020 to $0.00295 per share for displayed liquidity under NASDAQ's regular transaction execution fee and rebate schedule—is reasonable. NASDAQ further notes that by modifying the EHIP, NASDAQ is effectively reducing fees for members qualifying for the modified tier without making any offsetting fee increases.

With respect to the amendment to the rebate tiers in Rule 7018 for members active on both the NASDAQ Market Center and the NASDAQ Options Market, NASDAQ has noted in its prior

[10] Rule 7018(a) governs executions of securities priced at $1 or more. Fees and rebates applicable to securities priced under $1 are unchanged.

[11] ''Consolidated Volume'' is defined as ''the total consolidated volume reported to all transaction reporting plans by all exchanges and trade reporting facilities.''

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

filings with regard to these tiers that they are responsive to the convergence of trading in which members simultaneously trade different asset classes within a single strategy.[14] NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center.

NASDAQ believes that the modifications to the tiers are reasonable because by reducing the levels of Nasdaq Options Market activity required to qualify for the tiers, the change will ensure that the tiers remain accessible by a range of market participants, despite reduced trading volumes in options markets. NASDAQ further believes that the change is consistent with an equitable allocation of fees because it will provide for the continued availability of pricing incentives designed to benefit the market by encouraging liquidity provision. Finally, NASDAQ believes that the modified tiers are not unreasonably discriminatory, because the change provides for continued availability of the incentive offered through the tiers without modifying other rebate tiers that provide alternative means to achieve the same rebate levels but without use of the NASDAQ Options Market.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because the changes are intended to increase the availability of rebates that are designed to attract liquidity and thereby enhance NASDAQ's market quality.

[14] Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR–NASDAQ–2011–028); Securities Exchange Act Release No. 59879 (May 6, 2009), 74 FR 22619 (May 13, 2009) (SR–NASDAQ–2009–041).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In fact, because the proposed changes increase the availability of rebates, NASDAQ believes that the changes will enhance the degree of competition between NASDAQ and other trading venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–047 and should be submitted on or before May 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8712 Filed 4–10–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(a)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66753; File No. SR–NYSEArca–2012–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of the WisdomTree Brazil Bond Fund Under NYSE Arca Equities Rule 8.600

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 23, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the following fund of the WisdomTree Trust (''Trust'') under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): WisdomTree Brazil Bond Fund (''Fund''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Shares of the WisdomTree Brazil Bond Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed exchange-traded fund.[4] The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company.[5]

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. (''WisdomTree Asset Management'') is the investment adviser (''Adviser'') to the Fund.[6] WisdomTree Asset Management is not affiliated with any broker-dealer. Western Asset Management Company serves as sub-adviser for the Fund (''Sub-Adviser'').[7] The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.[8]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[9] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 58564 (September 17, 2008), 73 FR 55194 (September 24, 2008) (SR–NYSEArca–2008–86) (order approving Exchange listing and trading of WisdomTree Dreyfus Emerging Currency Fund); 62604 (July 30, 2010), 75 FR 47323 (August 5, 2010) (SR–NYSEArca–2010–49) (order approving listing and trading of WisdomTree Emerging Markets Local Debt Fund); 63919 (February 16, 2011), 76 FR 10073 (February 23, 2011) (SR–NYSEArca–2010–116) (order approving listing and trading of WisdomTree Asia Local Debt Fund); 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund); 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR–NYSEArca–2011–54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund); 66342 (February 7, 2012), 77 FR 7623 (February 13, 2012) (SR–NYSEArca–2011–82) (order approving listing and trading of WisdomTree Emerging Markets Inflation Protection Bond Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NYSEArca–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] *See* registration statement on Form N–1A for the Trust under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act, dated October 8, 2010 (File Nos. 333–132380 and 811–21864) (''Registration Statement''). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[6] WisdomTree Investments, Inc. (''WisdomTree Investments'') is the parent company of WisdomTree Asset Management.

[7] The Sub-Adviser will be responsible for day-to-day management of the Fund and, as such, typically will make all decisions with respect to portfolio holdings. The Adviser will have ongoing oversight responsibility.

[8] The Commission has issued an order granting certain exemptive relief (''Exemptive Order'') to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

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regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

WisdomTree Brazil Bond Fund

According to the Registration Statement, the Fund will seek to provide investors with a high level of total return consisting of both income and capital appreciation. The Fund will be designed to provide exposure to a broad range of Brazilian government and corporate bonds through investment in both local currency (*i.e.*, Brazilian real) and U.S. dollar-denominated Fixed Income Securities. For purposes of this proposed rule change, Fixed Income Securities will include bonds, notes, or other debt obligations, including loan participation notes (''LPNs''),[10] inflation-linked debt, and debt securities issued by ''supranational issuers,'' such as the European Investment Bank, International Bank for Reconstruction and Development, and the International Finance Corporation, as well as development agencies supported by other national governments. The Fund may invest to a lesser extent in Money Market Securities and derivative instruments, as described below.

The Fund will be designed to provide broad exposure to Brazilian government and corporate bonds and will invest in a range of instruments with varying credit risk and duration. The Fund intends to invest in bonds and debt instruments issued by the government of Brazil and its agencies and instrumentalities and bonds and other debt instruments issued by corporations organized in Brazil.[11] The Fund also may invest in bonds and debt instruments denominated in Brazilian real and issued by supranational issuers, as described above. The Fund intends to invest at least 70% of its net assets in Fixed Income Securities. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment.[12] Economic and other conditions in Brazil may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 20% of its net assets in corporate bonds with less than $200 million par amount outstanding, including up to 5% of its assets in corporate bonds with less than $100 million par amount outstanding, if (i) The Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of providing exposure to a broad range of Brazilian government and corporate bonds, and (iii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.

According to the Registration Statement, the Fund typically will maintain aggregate portfolio duration of between two and ten years. Aggregate portfolio duration is a measure of the portfolio's sensitivity to changes in the level of interest rates. The Fund's actual portfolio duration may be longer or shorter depending upon market conditions.

The universe of Brazilian Fixed Income Securities currently includes securities that are rated ''investment grade'' as well as ''non-investment grade'' securities. The Fund is designed to provide a broad-based, representative exposure to Brazilian government and corporate bonds and therefore will invest in both investment grade and non-investment grade securities in a manner designed to provide this exposure. The Fund currently expects that it will have 65% or more of its assets invested in investment grade securities, and no more than 35% of its assets invested in non-investment grade securities. Because the Fund is designed to provide exposure to a broad range of Brazilian government and corporate bonds, and because the debt ratings of the Brazilian government and those corporate issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade securities will change from time to time in response to economic events and

[10] The Fund may invest in LPNs with a minimum outstanding principal amount of $200 million that the Adviser or Sub-Adviser deems to be liquid. The Adviser represents that the Fund will invest a limited percentage of its assets in LPNs.

[11] The category of ''Brazilian debt'' includes both U.S. dollar-denominated debt and non-U.S. or ''local'' currency debt. The market for Brazilian local currency debt is larger and more actively traded than the market for Brazilian U.S. dollar-denominated debt. According to the Emerging Markets Traders Association, the global dollar amount of emerging market debt instruments traded in the first two quarters of 2011 was $3.443 trillion, of which Brazil represented over $358 billion. This pace seems largely similar to the annual amounts traded in 2010 whereby $6.765 trillion globally and $958 billion in Brazilian debt traded between market participants. This marked a 52% increase globally and a 28% increase in Brazilian debt over the total volumes of each traded in 2009 ($4.4445 trillion globally, $747 billion in Brazilian debt). Global turnover in local currency debt instruments in 2009 was $2.870 trillion, of which Brazilian debt represented $548 billion. (Source: Emerging Markets Traders Association Survey: Full Year 2010 Emerging Markets Debt Trading, Emerging Markets Traders Association, March 22, 2011; Emerging Markets Traders Association 2009 Annual Debt Trading Volume Survey, March 8, 2010. Additional information relating to emerging market corporate bonds is available at: *www.emta.org. See* Form 19b–4 at 7, n.10. The Adviser represents that Brazilian sovereign debt is issued in large par size and tends to be very liquid. Real-denominated Brazilian debt issued by supranational entities is also actively traded. Intra-day, executable price quotations on such instruments are available from major broker-dealer firms. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

[12] The Adviser represents that the size and liquidity of the market for emerging market bonds, including Brazilian corporate bonds, generally has been increasing in recent years. Through the first three quarters of 2011, emerging market corporate bonds traded approximately $652 billion. The aggregate dollar amount of emerging market corporate bonds traded in 2010 was $841 billion. This constituted a 63% increase over the $514 billion traded in 2009. As of January 31, 2012, the market for Brazilian corporate bonds represented 22.48% ($95.83 billion) of the JPMorgan Corporate Emerging Market Bond Index Broad, the industry standard benchmark for emerging market corporate debt. Brazilian corporate debt represents the single largest country exposure of the index. Turnover in emerging market corporate debt accounted for 12% of the overall volume of emerging market debt of $4.445 trillion in 2009, an increase over the 9% share in 2008. Trading in Brazilian corporate debt accounted for approximately 8% of the overall trading in Brazilian debt in 2009, an increase over the approximately 6% share in 2008. (Source: JPMorgan, January 31, 2012; Emerging Markets Traders Association Press Releases, March 8, 2010, August 22, 2011, December 15, 2011.) Additional information relating to emerging market corporate bonds is available at: *www.emta.org.*

changes to the credit ratings of the Brazilian government and corporate issuers.[13] Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 15% of its assets in securities rated B or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of ''comparable quality,'' the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

The Fund will hold Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or its agencies and instrumentalities or government-sponsored enterprises).[14]

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[15] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification, and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. The Subchapter M diversification tests generally require that (i) the Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are controlled by the Fund and that are engaged in the same, similar, or related trades or businesses, and (ii) at least 50% of the Fund's total assets consist of cash and cash items, U.S. government securities, securities of other RICs, and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of the Fund's total assets and 10% of the outstanding voting securities of such issuer.

In addition to satisfying the above referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities) will represent more than 30% of the weight of the portfolio, and the five highest weighted portfolio securities of the Fund (other than U.S. government securities) will not in the aggregate account for more than 65% of the weight of the portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities as U.S. government securities.

Money Market Securities

The Fund intends to invest in Money Market Securities (as described below) in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses and to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated Money Market Security becomes unrated, if such Money Market Security is determined by the Adviser or the Sub-Adviser to be of comparable quality.

Derivative Instruments

Consistent with the Exemptive Order, the Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include listed futures contracts,[16] forward currency contracts, non-deliverable forward currency contracts,[17] currency swaps (*e.g.,* Brazilian real vs. U.S. dollar), interest rate swaps,[18] total return swaps,[19] currency options, options on futures contracts, and credit-linked notes. [20] The Fund's use of derivative instruments (other than credit-linked notes) will be collateralized or otherwise backed by investments in short term, high-quality U.S. money market securities and other liquid fixed income securities. The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures, forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, under applicable federal securities laws, rules, and interpretations thereof, the Fund must ''set aside'' liquid assets or engage in other measures to ''cover'' open positions with respect to such transactions.[21]

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[13] As of January 31, 2012, Brazilian government debt was rated investment grade by S&P, Moody's, and Fitch. *See http://brasilstocks.com/bonds. See* Form 19b–4 at 8, n.12.

[14] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[15] 26 U.S.C. 851.

[16] The listed futures contracts in which the Fund may invest will be listed on exchanges either in the U.S. or in Brazil. Brazil's primary financial markets regulator, the Comissao de Valores Mobiliarios, is a signatory to the International Organization of Securities Commissions (''IOSCO'') Multilateral Memorandum of Understanding (''MMOU''), which is a multi-party information sharing arrangement among major financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

[17] A forward currency contract is an agreement to buy or sell a specific currency on a future date at a price set at the time of the contract.

[18] An interest rate swap involves the exchange of a floating interest rate payment for a fixed interest rate payment.

[19] A total return swap is an agreement between two parties in which one party agrees to make payments of the total return of a reference asset in return for payments equal to a rate of interest on another reference asset.

[20] The Fund may invest in credit-linked notes. A credit linked note is a type of structured note whose value is linked to an underlying reference asset. Credit linked notes typically provide periodic payments of interest as well as payment of principal upon maturity. The value of the periodic payments and the principal amount payable upon maturity are tied (positively or negatively) to a reference asset such as an index, government bond, interest rate, or currency exchange rate. The ongoing payments and principal upon maturity typically will increase or decrease depending on increases or decreases in the value of the reference asset. The Fund's investments in credit-linked notes will be limited to notes providing exposure to Brazilian Fixed Income Securities. The Fund's overall investment in credit-linked notes will not exceed 25% of the Fund's assets.

[21] *See* 15 U.S.C. 80a–18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 21258

Continued

The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to ''lock in'' the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.[22]

The Fund may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks, and may enter into reverse repurchase agreements, which involve the sale of securities held by the Fund subject to its agreement to repurchase the securities at an agreed upon date or upon demand and at a price reflecting a market rate of interest.

The Fund may invest in the securities of other investment companies (including money market funds and exchange-traded funds). The Fund may hold up to an aggregate amount of 15% of its net assets in (1) Illiquid securities, (2) Rule 144A securities, and (3) loan interests (such as loan participations and assignments, but not including LPNs).[23] Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.

The Fund will not invest in non-U.S. equity securities.

The Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'')[24] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants. Currently, a Creation Unit consists of 100,000 Shares. The Fund will issue and redeem Creation Units in exchange for a portfolio of Fixed Income Securities closely approximating the holdings of the Fund and/or an amount of cash in U.S. dollars. Once created, Shares of the Fund will trade on the secondary market in amounts less than a Creation Unit.

Creations and redemptions must be made by an authorized participant or through a firm that is either a member of the National Securities Clearing Corporation or a Depository Trust Company participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Units. Creation and redemption orders must be entered by 4 p.m., Eastern time.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement.

Availability of Information

The Fund's Web site (*www.wisdomtree.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[25] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session[26] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[27] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of Fixed Income Securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 8.600 as the Portfolio Indicative Value (''PIV'') that reflects an estimated intra-day value of the Fund's portfolio, will be disseminated. The PIV will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange.[28] In addition, during hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the PIV will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers'

(April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

[22] The Fund will invest only in currencies, and instruments that provide exposure to such currencies, that have significant foreign exchange turnover and are included in the Bank for International Settlements, *Triennial Central Bank Survey,* Report on Global Foreign Exchange Market Activity in 2010 December 2010 (''BIS Survey''). The Fund may invest in currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

[23] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[24] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4 p.m., Eastern time (''NAV Calculation Time''). NAV per Share is calculated by dividing a Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating a Fund's NAV, see the Registration Statement.

[25] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[26] The Core Trading Session is 9:30 a.m. to 4 p.m., Eastern time.

[27] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[28] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs published via the Consolidated Tape Association (''CTA'') or other data feeds.

computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the CTA high-speed line.

Intra-day and end-of-day prices are readily available through major market data providers and broker-dealers for the Fixed Income Securities, Money Market Securities, and derivative instruments held by the Fund.

Initial and Continued Listing

The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act,[29] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[30]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m., Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[31] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of

[29] *See* 17 CFR 240.10A–3.

[30] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* note 16, *supra.*

[31] 15 U.S.C. 78f(b)(5).

material nonpublic information regarding the Fund's portfolio. The Fund intends to invest at least 70% of its net assets in Fixed Income Securities. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. The Fund currently expects that it will have 65% or more of its assets invested in investment grade securities, and no more than 35% of its assets invested in non-investment grade securities. Money Market Securities acquired by the Fund will generally be rated investment grade, except, to a limited extent, such as where a rated Money Market Security becomes unrated, if such Money Market Security is determined by the Adviser or the Sub-Adviser to be of comparable quality. The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. The Fund may hold up to an aggregate amount of 15% of its net assets in (1) Illiquid securities, (2) Rule 144A securities, and (3) loan interests (such as loan participations and assignments, but not including LPNs). Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in any non-U.S. equity securities.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official

business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–25 and should be submitted on or before May 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8717 Filed 4–10–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66746; File No. SR–ISE–2012–28]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Route-Out Fee for Priority Customer Orders and Modify the Rebate for Primary Market Makers That Send Intermarket Sweep Orders

April 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to raise a fee related to the execution of Priority Customer orders subject to linkage handling. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to raise a fee related to the execution of Priority Customer[3] orders subject to linkage handling (''Linkage Fee'').

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan (''Distributive Linkage'') and the use of Intermarket Sweep Orders (''ISOs''). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange's Primary Market Makers (''PMMs'') have an obligation to address customer[4] orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge ''taker'' fees. To minimize the PMM's financial burden and help offset such fees, the ISE amended its schedule of fees on October 1, 2009 to adopt a rebate for the PMM of $0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO order sent away was executed).[5] With the costs associated with servicing Priority Customer orders that must be executed at another exchange coupled with the cost of funding the existing fee credit, the Exchange recently adopted the Linkage Fee, at a rate of $0.25 per contract, for executions that result from the PMM routing ISOs to another exchange in a limited number of symbols.[6] The Linkage Fee is only charged for Priority Customer orders that are routed to an away exchange in symbols that are subject to the Exchange's modified maker/taker pricing model. These symbols, which currently number 101, are identified on the Exchange's Schedule of Fees as Select Symbols. Priority Customer orders that are routed out to another exchange are charged the Linkage Fee at the current rate instead of the standard taker fee applicable to the Select Symbols.

The Linkage Fee allows the Exchange to equitably assess reasonable fees incurred for processing such orders, and permit the Exchange to recoup administrative and other costs. However, because the fees assessed by other exchanges vary considerably, the Exchange has determined that instead of providing PMMs with a rebate of $0.20 per contract, it will now simply rebate to PMMs the actual transaction fee assessed by the exchange to which the order is routed, while requiring the PMM to make every effort, all things being equal, to route the order to the lowest cost away market. Furthermore, as a result of recent fee changes, notably the taker fee increases adopted by NASDAQ OMX PHLX, Inc.,[7] the overall cost to PMMs has risen significantly and will likely cause the overall rebate level to the PMMs incurred by the Exchange to rise also. To offset this increased rebate, the Exchange also proposes to increase the Linkage Fee from $0.25 per contract to $0.35 per contract.

The Exchange notes that it currently has a similar fee and credit for Customer (Professional) orders. Specifically, the Exchange currently charges PMMs a fee of $0.45 per contract for executions of Customer (Professional) orders that are routed to one or more exchanges in connection with Distributive Linkage, and also provides PMMs with a credit equal to the fee charged by the destination exchange for such Customer (Professional) orders, but not more than

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account.

[4] Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

[5] *See* Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 52521 (October 13, 2009) (SR–ISE–2009–74).

[6] *See* Securities and Exchange Act Release No. 66589 (March 14, 2012), 76 [sic] FR 16311 (March 20, 2012) (SR–ISE–2012–13).

[7] *See* Securities and Exchange Act Release No. 66367 (February 9, 2012), 77 FR 8934 (February 15, 2012) (SR–Phlx-2012–15).

$0.45 per contract.[8] This routing fee and credit applies to all the symbols that are traded on the Exchange.

The Exchange has designated this proposal to be operative on April 2, 2012.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes charging a route-out fee for Priority Customer orders is reasonable if doing so provides the Exchange the ability to recover the costs of funding a credit the Exchange provides to its PMMs, who, in the course of meeting their obligation, are incurring a financial burden. The Exchange further believes it is equitable and reasonable to assess the proposed fee to recoup costs associated with routing Priority Customer orders to away markets. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees would be uniformly applied to all Priority Customer orders. ISE notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange further notes that the fees proposed herein are substantially lower than the level of fees charged by some of the Exchange's competitors.[9] And, as noted above, the Exchange already provides a credit equal to the fee charged by a destination exchange for Customer (Professional) orders, although that credit is currently capped at $0.45 per contract.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[10] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–28 and should be submitted on or before May 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8711 Filed 4–10–12; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Securities and Exchange Act Release No. 61855 (April 6, 2010), 75 FR 19441 (April 14, 2010) (SR–ISE–2010–26).

[9] *See* NASDAQ OMX PHLX Fee Schedule, Section V.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Radar Altimeter Equipment (For Air Carrier Aircraft)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Cancellation of Technical Standard Order (TSO)–C67, Airborne Radar Altimeter Equipment (For Air Carrier Aircraft).

SUMMARY: This is a confirmation notice of the cancellation of TSO–C67, Airborne Radar Altimeter Equipment (For Air Carrier Aircraft). The effect of the cancelled TSO will result in no new TSO–C67 design or production approvals. However, cancellation will not affect any current production of an existing TSO authorization (TSOA). Articles produced under an existing TSOA can still be installed per the existing airworthiness approvals, and all applications for new airworthiness approvals will still be processed.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1960, the FAA published TSO–C67, Airborne Radar Altimeter Equipment (for air carrier aircraft). Since 1978, there have been no new applications for TSOA for TSO–C67. Our research indicates there are no authorized manufacturers currently

manufacturing, advertising, or selling TSO–C67 compliant equipment. Therefore, given the obsolescence of the equipment, and the lack of industry interest in TSO–C67 product designs, we proposed cancelling TSO–C67. Please note that TSO–C87, Airborne Low Range Radio Altimeter, is currently used for Radio Altimeter certification and is not affected by this action.

Comments

There were no comments received during the public comment period of the **Federal Register** Notice of the FAA's intent to cancel TSO–C67.

Conclusion

TSO–C67 is cancelled effective September 30, 2012. Please note that TSO–C87, Airborne Low Range Radio Altimeter, is currently used for Radio Altimeter certification and is not affected by this action.

Issued in Washington, DC, on April 6, 2012.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–8653 Filed 4–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from GATX Corporation (WB512–16—3/22/2012), for permission to use certain data from the Board's 2010 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Marcin Skomial (202) 245–0344.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–8681 Filed 4–10–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35611]

Savage, Bingham & Garfield Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Pursuant to a written trackage rights agreement dated March 5, 2012, Elgin, Joliet and Eastern Railway Company (CN),[1] has agreed to grant limited overhead trackage rights to Savage, Bingham & Garfield Railroad Company (SBG) over approximately 0.6 miles of rail line between milepost J 47.4 (south end of CN's Whiting Yard) and Bridge Number 631 at or near milepost J 46.8 on CN's Calumet Spur on CN's Matteson Subdivision in Whiting, Ind.

The transaction is scheduled to be consummated on April 25, 2012, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to allow SBG to move freight for customers in CN's Whiting Yard on CN's Matteson Subdivision.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed by April 18, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35611, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David T. Ralston, Jr., Foley & Lardner LLP, 3000 K Street NW., Washington, DC 20007.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: April 3, 2012.

[1] Elgin, Joliet and Eastern Railway Company is an indirect subsidiary of Canadian National Railway Company.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–8804 Filed 4–10–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2012

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factors and reference prices for calendar year 2012 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and section 45(e)(10)(C) (26 U.S.C. 45(e)(10)(C)).

SUMMARY: The 2012 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

DATES: The 2012 inflation adjustment factors and reference prices apply to calendar year 2012 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2012 sales of refined coal and Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factors: The inflation adjustment factor for calendar year 2012 for qualified energy resources and refined coal is 1.4799. The inflation adjustment factor for Indian coal is 1.1336.

Reference Prices: The reference price for calendar year 2012 for facilities producing electricity from wind is 5.31 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $55.80 per ton for calendar year 2012. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy have not been determined for calendar year 2012.

Because the 2012 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2011. Because the 2012 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2012. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2012.

Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal: As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) and the $2.00 amount in section 45(e)(8)(D), are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2012 under section 45(a) is 2.2 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2012 under section 45(e)(8)(A) is $6.475 per ton on the sale of qualified refined coal. The credit for Indian coal production for calendar year 2012 under section 45(e)(10)(B) is $2.267 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: Philip Tiegerman, IRS, CC:PSI:6, 1111 Constitution Ave. NW., Washington, DC 20224, (202) 622–3110 (not a toll-free call).

Christopher T. Kelley,

Special Counsel to the Associate Chief Counsel (Passthroughs & Special Industries).

[FR Doc. 2012–8675 Filed 4–10–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 70 April 11, 2012

Part II

The President

Notice of April 10, 2012—Continuation of the National Emergency With Respect to Somalia

Federal Register
Vol. 77, No. 70
Wednesday, April 11, 2012

Presidential Documents

Title 3—

The President

Notice of April 10, 2012

Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the fragile security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, which have repeatedly been the subject of United Nations Security Council resolutions, and violations of the Somalia arms embargo imposed by the United Nations Security Council.

Because the situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on April 12, 2010, and the measures adopted on that date to deal with that emergency, must continue in effect beyond April 12, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
April 10, 2012.

[FR Doc. 2012–8907
Filed 4–10–12; 2:15 pm]
Billing code 3295–F2–P

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